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EXHIBITS

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1 Friday, 24 October 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, all Members sitting, with
14 the exception of: HONORABLE JUSTICE R. B. PAL, Member
15 from India, not sitting from 0930 to 1600; HONORABLE
16 JUSTICE BERNARD VICTOR A. ROLING, Member from the
17 Kingdom of the Netherlands, not sitting from 1330 to
18 1445; HONORABLE JUSTICE HENRI BERNARD, Member from
19 the Republic of France, not sitting from 1500 to
20 1600.

21 For the Prosecution Section, same as before.

22 For the Defense Section, same as before.

23 - - -

24 (English to Japanese and Japanese
25 to English interpretation was made by the
Language Section, IMTFE.)

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI and HIRANUMA, who are represented by
5 counsel. The prison surgeon at Sugamo certifies they
6 are too ill to attend the trial today. The certificates
7 will be recorded and filed.

8 THE PRESIDENT: Mr. Logan.

9 MR. LOGAN: If the Tribunal please, the rest
10 of the evidence set forth in the order of proof for
11 Mr. KIDO was designed only to corroborate his evidence
12 and contains no new matter. In the light of the Court's
13 ruling on the affidavit of Count MAKINO yesterday, I
14 feel I would only be exhausting the Court's time in
15 offering further affidavits which would be susceptible
16 to the same objections; so we therefore withdraw our
17 affidavit 2248, which is now under consideration, and
18 will not read 2258, which was admitted in part yesterday,
19 and, therefore, we conclude the presentation of
20 Mr. KIDO's evidence at this time.

21 THE PRESIDENT: Has the Language Arbitration
22 Board any report to make?

23 LANGUAGE ARBITER (Captain Kraft): If the
24 Tribunal please, I understand this affidavit has been
25 withdrawn, so the corrections are no longer necessary.

1 THE PRESIDENT: You cannot withdraw something
2 that is in evidence without leave, but if necessary
3 leave is given to withdraw it.

4 MR. LOGAN: We did not withdraw this affidavit.
5 I just said we are not going to read it. But I think
6 the corrections should be made.

7 THE PRESIDENT: Undoubtedly.

8 LANGUAGE ARBITER (Captain Kraft): If the
9 Tribunal please, we make the following language cor-
10 rections:

11 Page 8, line 12, now reads "importance"; it
12 should read "impotence."

13 Page 8, line 14, "later set up because of
14 possibility of military influence" should read "later
15 set up under military influence."

16 Page 10, lines 9 to 14, beginning "in
17 recommending" and ending "the army": The Japanese
18 counterpart of this sentence is not found in the affi-
19 davit signed by the affiant, SAKUDA, exhibit No. 3343.

20 THE PRESIDENT: Mr. Comyns Carr.

21 MR. COMYNS CARR: Therefore, that sentence
22 should be struck out of the English version of the
23 affidavit.
24

25 THE PRESIDENT: That will be done.

What is the next business? The cross-examination

1 of the witnesses who have come from the U.S.S.R.?

2 Mr. Comyns Carr.

3 MR. COMYNS CARR: Your Honor, this decision
4 of my friend, Mr. Logan, has taken us by surprise,
5 and it will be a few minutes before the witnesses can
6 be ready. We had no idea that the numerous affidavits
7 still in KIDO's list were not to be offered and no
8 notice of it.

9 MR. LOGAN: I am sorry about that, your
10 Honor, but we only made up our minds a few minutes ago
11 and did not know we were going to do this until this
12 morning.

13 THE PRESIDENT: Are you prepared to go ahead
14 with those witnesses today, Mr. Comyns Carr?

15 MR. COMYNS CARR: I beg your Honor's pardon?

16 THE PRESIDENT: Are you prepared to go ahead
17 with the witnesses from the U.S.S.R. today?

18 MR. COMYNS CARR: I am just finding out. I
19 had nothing to do with it.

20 MR. LOGAN: If there is any delay on that,
21 if the Tribunal please, I understand that Mr. KIMURA
22 is ready to proceed.

23 THE PRESIDENT: KIMURA's case is the next in
24 alphabetical order.

25 MR. COMYNS CARR: Your Honor, the prosecution

1 is prepared to accept that last suggestion. They are
2 ready to go ahead with KIMURA's case if the defense
3 are ready, but it will take a little time to bring
4 the Russian witnesses here for cross-examination. But
5 the prosecution would be glad to dispose of the Russian
6 witnesses as soon as possible. If they had only known
7 of this, they would have been glad to dispose of this
8 today.

9 THE PRESIDENT: Is KIMURA's order of proof
10 a lengthy one? I have not seen it.

11 MR. COMYNS CARR: I understand not very lengthy,
12 your Honor, but the prosecution would prefer to inter-
13 pose the Russian witnesses at a convenient point in
14 KIMURA's order of proof as soon as they are in the
15 building.

16 THE PRESIDENT: We will proceed with KIMURA's
17 case. We can decide later whether we will let you inter-
18 pose the Russian witnesses.

19 MR. COMYNS CARR: Yes, if your Honor pleases.

20 THE PRESIDENT: Who is taking KIMURA's?

21 MR. HOWARD: Mr. President, we are prepared
22 to proceed with the defense of General KIMURA, but we
23 would like to complete the presentation after we once
24 start.
25

THE PRESIDENT: Go ahead with KIMURA's case
and do not waste so much time.

1 MR. HOWARD: Mr. President, with the Tribunal's
2 permission, I will read the opening statement for the
3 defense of KIMURA, Heitaro, which is defense document
4 No. 2719.

5 Mr. President and Members of the Tribunal,
6 evidence will be presented for General KIMURA to show
7 that he was Chief of Staff of the Kwantung Army from
8 October 22, 1940 until April 10, 1941, and not from
9 October 1939 to October 1940, as alleged by the
10 prosecution. It will also be shown that KIMURA was
11 actually in Manchuria as Chief of Staff for about four
12 months only, and that while he was in Manchuria he had
13 no connection with Germany.

14 Evidence will be presented to the effect
15 that KIMURA did not take any interest in politics,
16 economics, or diplomacy. That KIMURA while Vice War
17 Minister did not formulate policies nor advise in their
18 formulation. That he acted only under prescribed
19 regulations and assisted the War Minister on purely
20 administrative matters. Witnesses will also testify
21 that important decisions were not made by KIMURA and
22 that matters concerning the treatment of prisoners of
23 war were decided by the War Minister and orders con-
24 cerning such issued in the name of the Vice War
25 Minister. It will be shown that the authorities and

1 responsibilities of the Vice War Minister were not
2 increased after TOJO became concurrently War Minister
3 and Prime Minister.

4 Following this there will be presented affi-
5 davits of men who held positions in the War Ministry
6 and Navy Ministry. They will explain in detail the
7 way administrative matters were handled by the Vice
8 War Minister. It will be shown that KIMURA concen-
9 trated his energy chiefly on ordnance administrative
10 matters and at the same time endeavored to establish
11 and maintain harmony in the Ministry. It will be shown
12 that important orders issued by the War Ministry were
13 preceded by the words, "As the Minister has decided
14 so I send this note by order."

15 It will be shown that the Vice War Minister
16 acts as an assistant to the Minister concerning military
17 administrative affairs, but not concerning state affairs.
18 That he could not have had authority in state matters
19 unless authorized by the Emperor.

20 Although a prosecution witness has already
21 testified that the Vice War Minister had no authority
22 to command, appoint, dismiss or punish the chiefs of
23 bureaus and departments, evidence will be produced to
24 verify these facts by defense witnesses. One affidavit
25 will show that a vice minister has no authority to

1 direct, command or cancel the business specially
2 assigned to each of the bureaus and divisions.

3 Concerning the trial of the "Doolittle Flyers"
4 it will be conclusively shown that KIMURA was not re-
5 sponsible for any decision in connection with this
6 matter. However, since the prosecution has stated
7 that "he personally issued the order for the death
8 penalty on captured airmen," we will offer evidence to
9 show the kind of trial contemplated by the War Ministry.
10 This might more properly be used in other individual
11 phases but is being offered now since the Tribunal
12 has indicated an interest in the form of trial.

13 Evidence will be offered to show that the
14 advice of counsel was sought by the War Ministry con-
15 cerning the revision of the Prisoner of War Punishment
16 Act.

17 SEMBA, Tsutomu, the man who drafted the "Note
18 of Utilizing the Manchurian Machine Tool Company for
19 the Purpose of Urgent Aerial Maintenance" will testify
20 that they had no intention of using the Manchurian
21 Tool Company in the production of arms and in fact did
22 not do so.

23 TANAKA, Tadakatsu will testify that much of
24 KIMURA's time was taken in attending ceremonial and
25 routine matters. He will also testify that KIMURA was

1 not materially concerned with the drafting of the
2 revision of the Prisoner of War Punishment Act. He
3 will further testify that KIMURA had nothing to do
4 with the drafting of the instruction by the War Minis-
5 ter to the Zentsuji Division concerning the treatment
6 of prisoners of war on May 30, 1942.

7 Since the prosecution has gone so far afield
8 in citing exhibit numbers in which they charge KIMURA
9 as being responsible for alleged atrocities in particu-
10 lar, we have found it necessary to take up all of the
11 exhibits that deal with the Burma area atrocities even
12 though KIMURA was there only a short time.

13 It will be shown that there were other
14 Japanese troops in the Burma area besides those under
15 KIMURA's command. ICHIDA, Jiro, will testify that no
16 report of the alleged atrocities in Burma was ever
17 received by the Burma Area Army headquarters. It will
18 be shown that the Commander of the Burma Area Army had
19 nothing to do with the Mergui-Kirihkan Road. Some
20 evidence has already been introduced in the general
21 defense and in the individual defense of other accused
22 which is also defensive matter for KIMURA. For in-
23 stance, it was shown that the treatment of prisoners
24 of war and civilian internees in the Burma area was
25 generally good during the time that General KIMURA was

1 in command. It was also shown that letters of thanks,
2 were received from former prisoners of war.

3 Although KIMURA is named in the conspiracy
4 counts, no proof has been made that he did anything
5 more than any loyal soldier would have done when his
6 country was at war or was preparing for war. Hence,
7 there is nothing for us to answer concerning the
8 alleged conspiracy.

9 I now take up defense document 1025, the
10 affidavit of the accused UMEZU. By agreement with
11 the prosecution we are not offering this affidavit
12 now, but reserve the right to present the same on
13 direct examination of General UMEZU when he becomes
14 a witness in his own behalf. In the event General
15 UMEZU does not appear, we request that our right to
16 call him as a witness for General KIMURA be reserved.

17 I next offer in evidence defense document --

18 THE PRESIDENT: We do not want this document.
19 It is not in evidence. You had better take it back.

20 MR. HOWARD: We next offer in evidence defense
21 document 2034, the affidavit of General Kretschmer.

22 THE PRESIDENT: Colonel Mornane.

23 COLONEL MORNANE: If the Tribunal please,
24 with regard to this document the prosecution objects
25 to the last sentence, which reads: "I think

1 Ambassador Ott used these exaggerated phrases only to
2 urge the reluctant German Foreign Office to grant the
3 decorations." It is objected to as being merely the
4 opinion of the witness, who is not showing any grounds
5 for knowing the fact.

6 THE PRESIDENT: The objection must be upheld.
7 The document with the exception of the last
8 sentence is admitted on the usual terms.

9 CLERK OF THE COURT: Defense document 2034
10 will receive exhibit No. 3346.

11 (Whereupon, the document above re-
12 ferred to was marked defense exhibit No. 3346
13 and received in evidence.)

14 MR. HOWARD (Reading): "Name: Alfred F.
15 Kretschmer.

16
17 "Supplementing my affidavit of April 24, 1947,
18 I wish to explain exhibit 1272 in which Ambassador Ott
19 stated, 'On recommendation of the Military Attache,
20 Lt. General Heitaro KIMURA, Vice Minister of War, born
21 28th September 1888 in Tokyo Prefecture. KIMURA was in
22 Germany 1922-1924. In his position of Chief of the
23 General Staff of the Kwantung Army, October 1939 to
24 October 1940, he especially worked in behalf of Germany.
25 Vice Minister of War since 10 April 1941. He is one
of the principal advocates of German-Japanese Military

1 Cooperation; Grade: Great Cross.' I did not word
2 even this part of the telegram, but the Ambassador's
3 wording is based, without any doubt, on my proposition
4 and its dates, which, as I see now, were incorrect.

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1 "As to the wording, 'he has especially worked
2 in behalf of Germany,' I am sure that it refers to the
3 following fact:

4 "Before the German-Soviet Russian war, tung-
5 sten, rubber, soya beans and other goods were sent
6 to Germany via Manchuria and the Soviet Union. These
7 shipments were often delayed by the Japanese Railway
8 authorities in Manchuria. In such cases the German
9 Mission in Hsingking had to ask for the help of the
10 Headquarters of the Kwantung Army in Hsingking. But
11 I am not sure whether such cases occurred while
12 General KIMURA was the Chief of Staff of the Kwantung
13 Army.

14 "During the time General KIMURA was Vice War
15 Minister, I was ~~neither~~ asked to his office, nor did
16 he come to call on me in my office to talk with me on
17 official business. My official connections with the
18 War Ministry did not reach higher than to the polit-
19 ical department, Major General SATO, and even him I
20 met very seldom officially.

21 "In exhibit No. 1272, there are Ambassador
22 Ott's additional remarks as follows: 'KIMURA has
23 closely co-operated with War Minister and Prime
24 Minister TOJO already on the Kwantung Army. His
25 personal relationship to TOJO as well as his primary

1 preoccupation in his position of Prime Minister have
2 enhanced his influence on the leadership of the War
3 Ministry, as well as his position in regard to the
4 other Vice-Ministers to a marked degree.'

5 "I observed nothing that indicated to me
6 that the foregoing statement of Ambassador Ott was
7 true."

8 I next offer in evidence defense document
9 No. 2599, which is an excerpt from an official Japa-
10 nese Government document and is self explanatory.

11 THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Defense document 2599
13 will receive exhibit No. 3347.

14 (Whereupon, the document above
15 referred to was marked defense exhibit
16 No. 3347 and received in evidence.)

17 MR. HOWARD: I will read exhibit No. 3347:

18 "Curriculum Vitae of KIMURA, Heitaro

19 "Appointed the Chief of the Staff, Kwantung
20 Army -- October 22, 1940"

21 I should like next to call the Tribunal's
22 attention to exhibit No. 3031, which is a chart
23 showing the Japanese military organization of
24 December, 1941. You will notice that this shows the
25 Vice War Minister to be on an equal footing with the

1 Parliamentary Vice-Minister and the Parliamentary
2 Vice-Councillor, none of whom are shown to be a link
3 in the chain of command.

4 I offer in evidence defense document 2229,
5 which contains excerpts from the General Regulations
6 for the Service and Handling of Documents, concerning
7 transaction of affairs of the War Ministry. I desire
8 to read the marked portions only.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 2229
11 will receive exhibit No. 3348.

12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 3348 and received in evidence.)

15 MR. HOWARD (Reading):

16 "CHAPTER I

17 "General Rules

18 "Article 1. These Regulations shall provide
19 for items concerning the transaction of affairs under
20 the jurisdiction of the War Minister and the trans-
21 action of affairs between the War Minister and the
22 Army Air Force Headquarters.

23 "Article 2. The affairs of this ministry
24 shall be divided among the Bureaus and the minister's
25 secretariat and the minister's secretariat shall take

charge of the management of affairs thereof, unless
1 otherwise provided.

2 "Article 3. Documents to be issued within
3 or without the Army may be dispatched in the name
4 either of the Vice-Minister or of the Senior Adjutant
5 according to their nature.

6 "CHAPTER II

7 "SERVICE

8 "Article 8. The Vice-Minister shall assist
9 the Minister, manage ministerial affairs and super-
10 vise the Minister's Secretariat and each respective
11 Bureaus.

12 "Article 10. Bureau Chiefs shall take
13 charge of Bureau affairs and command and supervise
14 their subordinates, pursuant to the orders of the
15 Minister.

16 "Article 12. Bureau Chiefs shall establish
17 detailed regulations concerning the transaction of
18 affairs of their Bureaus and the Senior Adjutant
19 shall do likewise in connection with the Minister's
20 Secretariat, subsequently reporting them to the Mini-
21 ster.

22 "CHAPTER III

23 "Article 21. Official documents arriving
24 at this Ministry shall be received by the communication
25

1 clerk of the Minister's Secretariat except those
2 addressed to Bureau or Section Chiefs and will be
3 handled.

4 "Article 22. Telegrams which arrive at
5 this Ministry except ordinary ones addressed to the
6 Bureau or Section shall be received by the communi-
7 cation clerks of the Minister's Secretariat and be
8 translated except those relating to personnel affairs
9 or those of which translation is prohibited by special
10 order, and will be delivered to the competent adjutant
11 or according to the delivery book directly to the
12 addressee except those relating to personnel affairs
13 which will be delivered to the competent Section. The
14 translation of confidential telegrams or those requir-
15 ing more confidential treatment shall be conducted by
16 officers specially nominated.

17 "Article 24. The competent adjutant shall
18 deliver the documents which among those prescribed in
19 paragraph 3 of Article 21 and the preceding article
20 excepting those in the proviso are deemed important
21 and deserving prompt inspection by the Minister, the
22 Parliamentary Vice-Minister, the Vice-Minister or the
23 Councillor, to the Senior Adjutant. Other documents
24 will be handed over to liaison clerks for delivery
25 to sections concerned, nominating the competent section

1 for those which need be submitted for consideration
2 to respective Sections, and the Section concerned
3 for those simply to be circulated for perusal.

4 "Article 27. The transaction of affairs of
5 this Ministry shall be entrusted on the basis indi-
6 cated in attached tables 1 - 10 to the decision of
7 the Vice-Minister, Bureau Chiefs or to the Senior
8 Adjutant. But the Bureau Chiefs may, within their
9 spheres, transfer matters of minor importance to the
10 disposal of the competent Section Chief.

11 "Among the matters, decided upon according
12 to the prescription of the preceding paragraph those
13 where it is deemed necessary will be reported to the
14 superiors as occasion arises.

15 "Article 31. As to approval of a document
16 under consideration, the section in charge shall,
17 in accordance with the provisions of Article 27 and
18 with the degree of its importance, indicate (Vice-
19 Minister in charge) on a column specified for approval
20 of the document in case an approval of Vice-Minister
21 should be required and (Director in charge) if an
22 approval of a Director is required and if the document
23 is to be sent around (before or after execution) to a
24 parliamentary Vice-Minister or councillor the same
25 section shall make an indication to this effect on

1 the same column.

2 "Article 40. The documents of each section
3 whose consideration have already been finished must
4 be handed over to the Minister's Secretariat without
5 delay for review by the Adjutant and to have it
6 carried into effect after getting approval of the
7 Minister or Vice-Minister to whom they are submitted
8 in order. But those which bear an indication of
9 (Bureau Chief in charge) or matters with which the
10 Senior Adjutant is entrusted must be carried into
11 effect immediately by the Senior Adjutant and among
12 matters with which the Bureau Chief and the Senior
13 Adjutant are entrusted which are considered simple
14 can be carried into effect by the principal Adjutant
15 in charge without the review of the Senior Adjutant."
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1 I next offer in evidence defense document
2 579. I desire to read only the marked portions of
3 this document, being "Appendix No. 1, Matters En-
4 trusted to the Army Vice-Minister," paragraphs 1
5 to 20 inclusive on pages 2 and 3.

6 THE PRESIDENT: Colonel Mornane.

7 COLONEL MORNANE: If the Tribunal pleases,
8 referring to the preceding exhibit, 3348, I wish to
9 draw the attention of the Tribunal to the fact that
10 in Article 27 reference is made to attached tables
11 1 to 10, setting up the duties of the Vice-Minister,
12 Bureau Chiefs and Senior Adjutant. I think in order
13 to give that article any meaning, that this document
14 should be produced. It is not part of the excerpt
15 that has been produced.

16 I understand that my friend is not at
17 present in a position to produce it, nor am I, on
18 account of KIMURA's case coming on so suddenly today.
19 But I will have it available on Monday and I wish to
20 ask the Tribunal to reserve me leave to put it in
21 on Monday, assuming the whole of KIMURA's case is
22 completed today. That is, assuming witnesses to
23 whom I could have put the document have already had
24 their cross-examination completed.

25 THE PRESIDENT: So far as the paragraph that

1 you have referred to depends upon the meaning of
2 or what is in the tables, it is not in evidence at
3 all. It does not mean a thing. I do not know what
4 obligation you have to tender anything. It is
5 enough for you to point out that without those
6 tables, most of the paragraph has no meaning or
7 effect.

8 COLONEL MORNANE: For the purposes of the
9 prosecution, it is desired to have those tables
10 before the Court and, secondly, for use in cross-
11 examining certain of the witnesses that will be
12 called on behalf of KIMURA.

13 THE PRESIDENT: There is another way of
14 doing that. If the defense do not want to tender
15 it, we cannot allow you to do so at this stage.

16 COLONEL MORNANE: In those circumstances,
17 your Honor, it may be necessary for me to ask per-
18 mission to postpone the cross-examination of three
19 of the accused's witnesses today to a later stage.

20 THE PRESIDENT: You are in the position,
21 Mr. Howard, of having to explain why you have omitted
22 it.

23 MR. HOWARD: I didn't think it was necessary,
24 your Honor, since this document that I have just
25 offered shows the matters entrusted to the Army

1 Vice-Minister.

2 THE PRESIDENT: Is there any objection
3 to this document last tendered, Colonel Mornane?

4 COLONEL MORNANE: No objection, Mr.
5 President.

6 MR. HOWARD: But, now, since it appears
7 that it possibly is necessary that this be produced
8 for the defense of KIMURA, I would like the right
9 to produce that at the earliest possible date.

10 THE PRESIDENT: You propose to tender those
11 lists of cases. Do so during KIMURA's case.

12 The document last tendered is admitted on
13 the usual terms.

14 CLERK OF THE COURT: Defense document 579
15 will receive exhibit No. 3349.

16 (Whereupon, the document above re-
17 ferred to was marked defense exhibit No. 3349
18 and received in evidence.)

19 MR. HOWARD: (Reading)

20 "Appendix No. 1

21 "Matters Entrusted to the Army Vice-Minister

22 "1. Enactment, alteration, and abolition
23 of laws of minor importance;

24 "2. Official tours of Army Department
25 officials below sonin rank (rank of officials appointed

1 with the Emperor's approval) in the interior, Korea,
2 and Saghalien;

3 "3. Authorization of incorporations,
4 articles thereof, subscription, and alteration of
5 provisions;

6 "4. Working budgets for the Yasukuni
7 Shrine and the Military Museum;

8 "5. The Emperor's or Imperial Prince's
9 presence at the commencement exercises of Army schools;

10 "6. The Emperor's approval for appropriation
11 of war relief funds (excepting cases of minor importance)

12 "7. Various visits made as the minister's
13 representatives, connected with personnel affairs
14 (excepting cases of little importance);

15 "8. Decision as to how many should be
16 chosen out of gendarmerie officer-candidates and
17 gendarmerie 2nd Lieutenant-candidates (of all units);

18 "9. Number of students to be admitted into
19 various military schools;

20 "10. Assignment of officer-candidate students
21 to their respective units;

22 "11. Recognition of conscription exemption
23 schools;

24 "12. School applications for attachment of
25 military officers;

1 "13. Special rewards to officials, civil
2 and military, below hannin rank (junior official
3 rank);

4 "14. Imperial University lecture-attending
5 officers, the courses of lectures, and their schedules;

6 "15. Selection of officer-students to be
7 assigned to the Tokyo School of Foreign Languages
8 for study and of officers to be sent abroad for
9 study;

10 "16. Matters of minor importance re
11 conference on the scene and date of maneuvers to be
12 held under supervision of the War Minister, Chief
13 of General Staff, Inspector General of Military
14 Education and also on the choice of units (divisions)
15 participating in them;

16 "17. Convocation of Chiefs of Staff's
17 conference and its schedule;

18 "18. Matters of minor importance re
19 organization affairs;

20 "19. Matters of minor importance re
21 Manchuria and China;

22 "20. Instructions to government officials
23 stationed abroad, government school professors sent
24 abroad, government officials despatched abroad."

25 THE PRESIDENT: Colonel Mornane.

1 COLONEL MORNANE: If the Tribunal pleases,
2 I would like to have it appear in the record that
3 there are various other duties included in that
4 list. The way my friend has read it, as matters
5 entrusted to the Vice-Minister, would appear as
6 though it were quite comprehensive, whereas, there
7 are quite a number of other duties which have not
8 been read out.

9 THE PRESIDENT: The whole document is in
10 evidence. You may use the balance of it at the
11 proper time.

12 MR. HOWARD: The next document on the order
13 of proof is the affidavit of KAWAHARA, but he is one
14 of the witnesses whom Colonel Mornane wished to
15 cross-examine from the documents which we are to
16 produce later, so I will pass it at the present time.

17 I offer in evidence defense document 1334,
18 "Regulations of the Kempei." I desire to read only
19 the marked portions of this document, they being
20 Article 1 and a part of Article 2.

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: Defense document 1334
23 will receive exhibit No. 3350.

24 (Whereupon, the document above re-
25 ferred to was marked defense exhibit No. 3350

1 - and received in evidence.)

2 MR. HOWARD: (Reading)

3 "Regulations of the Kempei

4 "Imperial Ordinance No. 337, dated November
5 29, 1898 (Meiji 31)

6 "Chapter I. General Provisions

7 "Article 1. The Kempei shall be under the
8 jurisdiction of the Minister of War, and shall
9 primarily control the military police and concurrently
10 the administrative and judicial police.

11 "Article 2. In the execution of his duties,
12 the Kempei shall take orders from the Minister of War
13 and the Minister of the Navy in regard to military
14 police matters; from the Home Minister regarding
15 administrative police matters; and from the Minister
16 of Justice regarding judicial police matters."
17

18 The next document on the order of proof is
19 the affidavit of SHIBAYAMA, which I wish to pass
20 for the moment for the same reason that I passed the
21 other one.

22 Next, I have defense document 495, the
23 affidavit of SAWAMOTO. Late yesterday afternoon
24 I received word that he was ill and would be unable
25 to attend.

 COLONEL MORNANE: In view of the illness

1 of this witness, the prosecution consents to his
2 affidavit being read.

3 MR. HOWARD: Beginning at paragraph 1 --

4 THE PRESIDENT: It is not tendered.

5 I take it, it is tendered. It is admitted
6 on the usual terms.

7 CLERK OF THE COURT: Defense document 594
8 will receive exhibit No. 3351.

9 (Whereupon, the document above
10 referred to was marked defense exhibit
11 No. 3351 and received in evidence.)
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MR. HOWARD: Beginning at paragraph 1:

"I was Vice-Minister of the Navy during my term of office from April 1941 to July 1944.

"As Lt. General KIMURA was Vice-Minister of War during his term of office from April 1941 to March 1943, I had official relations, as his colleague, during Lt. General KIMURA's tenure of office as Vice-Minister of War; but other than that, I had no connection at all with him, neither before nor after the said period.

"During the time that I was Vice-Minister of the Navy the regulations concerning the duties and responsibilities of that office were construed to mean and were placed in practice as follows:

"(1) According to the Government organization, the Vice-Minister is to assist the Minister in the latter's capacity as the chief administrative official and there is no stipulation by virtue of which the former ought to help the Minister in his character of Minister of State.

"(2) Before the Vice-Minister could act as proxy for the Minister, the Cabinet must grant permission by special proceedings, the Minister not having the authority to give such orders otherwise.

"(3) From the viewpoint of the government organization, only the Minister, and not the Vice-

1 Minister, has a right of direction and command, author-
2 ity over personnel matters, and power to punish over
3 each of the Bureaus and Divisions. The Vice-Minister
4 can do no more than to lend a helping hand by express-
5 ing his opinion on these matters to the Minister, with
6 the exception, however, of persons who, in conformity
7 with the regulations, are in the service by order of the
8 Vice-Minister; for example, Navy Archives Officials.

9 "(4) From the viewpoint of the government
10 organization, chiefs of each of the bureaus and
11 divisions are directly responsible to the Minister for
12 the business in his department and directs and super-
13 vises in that office the respective business of each of
14 the divisions and sections.

15 "(5) According to the regulations common to the
16 official organization of each ministry, it is provided
17 that 'the Vice-Minister helps the Minister, adjusts
18 departmental affairs and supervises the business of each
19 bureau and division.'

20 "a. 'Adjustment of departmental affairs' has,
21 for its principal object, coordination of the business
22 in each of the bureaus and divisions and carrying out of
23 smooth execution of the affairs between bureaus and
24 divisions. Besides this, he attends to the matters
25 entrusted to him and various functions which do not

1 belong to any of the bureaus or divisions and other
2 miscellaneous matters.

3 "b. 'Supervision of business' means here super-
4 vision of business to be carried out by the Vice-
5 Minister in the sense of helping the Minister as an
6 assistant since chiefs of bureaus and divisions, accord-
7 ing to the government organization, are respectively
8 dealing with the matters for which they are responsible
9 and directing and supervising the business of each
10 bureau, division and section by order of the Minister.

11 "Accordingly, the Vice-Minister has no author-
12 ity to direct, command or cancel the business specially
13 assigned to each of the bureaus and divisions. In cases
14 necessitating direction, command or cancellation, he has
15 no other recourse than to express his opinion to the
16 Minister and await his instructions.

17 "(6) The Vice-Minister has no authority to de-
18 cide matters other than those which are assigned to him
19 and, of course, no right to command outside his juris-
20 diction. Accordingly, as to the matters other than
21 those which are assigned to him, even though an approval
22 of the Vice-Min' ster is lacking, it is not unlawful so
23 long as an approval of the Minister exists. Actually,
24 in the Navy Ministry the Vice-Minister does not, by
25 usage, take part in the nomination and appointment of

1 personnel.

2 "(7) In case of establishing regulations or
3 giving orders in general, such as ministerial ordinances,
4 notifications and instructions, etc., they are issued in
5 the name of the Minister; and there are many cases,
6 though it is actually the order of the Minister, in which
7 the Minister's name is not used according to clerical
8 usage. Instead, notifications by order in the name of
9 the Vice-Minister are usually issued.

10 "(8) Accordingly, a Vice-Minister's notifica-
11 tion by order is nothing more than a communication in
12 writing made in the name of the Vice-Minister of what
13 has been decided by the Minister.

14 "(9) The Vice-Minister's notification, which
15 is different from the Vice-Minister's notification by
16 order of the Minister, is issued in connection with
17 matters assigned to the Vice-Minister in accordance with
18 the official business regulations, etc.

19 "When there is a Cabinet change, no member of
20 the Navy Ministry is affected except the Navy Minister.
21 I do not remember of any case in which the Vice-Minister
22 of the Navy was changed as a result of a political
23 change. I remained in office as Vice-Minister of the
24 Navy from KONOYE's third cabinet to TOJO's Cabinet;
25 however, it was only due to usage and had no special

1 meaning.

2 "I, just the same as the Vice-Minister of other
3 ministries, was requested to be a committee man or
4 councillor of various committees, but it was only
5 nominal so that I do not remember even the number and
6 title of the organizations to which I belonged. Accord-
7 ingly, I failed to attend most of these committee meet-
8 ings. On rare occasions, I did attend some of these
9 meetings, but in many cases it was called nominally and
10 the proceedings of such meetings had already been
11 deliberated beforehand, so that I seldom discussed
12 matters in question myself in the meeting nor tried to
13 change the contents of the decision. I did not do more
14 than simply hear their reports.

15 "I was also, by request, Councillor of the
16 Total War Research Institute as were the Vice-Ministers
17 of other ministries, but the only chance I had to take
18 part in the proceedings of the Institute, as I remember
19 it now, was to attend once a year, together with my
20 colleagues from other ministries, for the purpose of
21 hearing the report of the result of the studies."
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1 I next offer in evidence defense document
2 2600, which is a number of excerpts from military
3 court-martial law which was in effect when the
4 military secret order No. 2190 concerning the
5 Doolittle fliers was despatched.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 2600
8 will receive exhibit No. 3352.

9 (Whereupon, the document above
10 referred to was marked defense exhibit 3352
11 and received in evidence.)

12 MR. HOWARD: Before reading court exhibit
13 3352, I should like to call the Tribunal's atten-
14 tion to the fact that one of the Language Board's
15 corrections of exhibit 1992, on page 14,951 of the
16 record, has the last sentence read as follows:
17 "In regard to the above courts-martial, the provisions
18 of the specially established court-martial stated in
19 the army court-martial law shall be applied."

20 "MILITARY COURT MARTIAL LAW (EXCERPTS)

21 "Martial Law #85, April 26, 1921.

22 "Revised: law 8, 1941, law 78, 1942.

23 "Part 1. Court Martial.

24 "Chapter 1. The right of trial by Court-
25 Martial.

"Article 1. The court-martial has the right

1 to try the undermentioned for the alleged crimes
2 committed by them.

3 "1. Those who are mentioned in the 1st to
4 3rd inclusive paragraph, latter part of the 4th and
5 the 5th paragraph of Article No. 8 and also Article
6 No. 9 of the Army Criminal Code.

7 "2. The crew of the army transports.

8 "3. Those belonging to and accompanying the
9 army other than mentioned in the previous two items.

10 "4. Prisoners of war.

11 "When it is necessary to specially exempt
12 those mentioned in the previous items 2 and 3, it should
13 be decided by order.

14 "Article 2. The court-martial also has the
15 right to try those who are mentioned in the previous
16 article for alleged crimes committed prior to the
17 time their status was acquired.

18 "The court-martial has the right to try
19 those who are mentioned in the previous articles,
20 although they are no longer in one of the above men-
21 tioned categories if they are arrested, imprisoned,
22 detained or reported for search, while still retaining
23 their status.

24 "Article 3. The court-martial has the right
25 to try those who are mentioned in the first part of

1 paragraph four of article 8 of the Army Criminal
2 Code for their alleged crimes in violation of the
3 army code.

4 "The regulation of the second item of the
5 previous article applies to the crimes mentioned in
6 the previous item.

7 "Chapter 2. Jurisdiction of Court-Martial.

8 "Article 8. The court-martials which shall
9 be established are as follows:

10 "1. The General court-martial.

11 "2. The Army court-martial

12 "3. The division court-martial

13 "4. The Encircled Locality court-martial

14 "5. The Temporary court-martial.

15 "Article 9. The General court-martial, the
16 Army court-martial and the Division court-martial
17 shall be permanently established. The Encircled
18 Locality court-martial, in case where "Vaigen"
19 (TN: a kind of military administration) is proclaimed,
20 shall be specially established. The Temporary court-
21 martial shall be specially established as needed by
22 the army organized in the event of war or an incident.

23 "Article 10. The Minister of War shall be
24 appointed the Chief of the General court-martial.

25 "The Army Commander shall be appointed the

1 Chief of the Division court-martial.

2 "The Commander of a unit or of the area who
3 establishes the court-martial shall be appointed the
4 Chief of the pecially established court-martial.

5 "Article 16. The Temporary court-martial is
6 vested with jurisdiction over the following cases:

7 "(1) Cases against those who are under the
8 command of or under the control of the commander of
9 the unit which establishes the Temporary court martial
10 except in cases where the court-martial is established
11 in units under his jurisdiction and those who are
12 under the command of or under the control of the
13 commanders of these units shall not be included.

14 "(2) Cases against those in areas of opera-
15 tions, control or defence of the unit in whose area
16 the Temporary court-martial is established, or those
17 prescribed in Articles 1 and 3 who have committed
18 alleged crimes in the said areas; this shall be
19 limited to those cases where the units of the accused
20 do not have a court-martial in the said areas.

21 "(3) Cases against those prescribed in Article
22 6 who are stationed in areas of operations, control or
23 defence of the unit where the Temporary court-martial
24 is established.

25 "Chapter 4, Organs of Trial.

1 "Article 47. The trials shall be carried on
2 by the council consisting of five judges of the court-
3 martial.

4 "The judges of the court martial shall be
5 selected from judges and judicial officers, with the
6 senior judge as its president.

7 "In case of the specially established court
8 martial, the judges shall be reduced by two excluding
9 the senior judge and judicial officers. The same
10 will hold true in the case of the permanent court
11 martials except the higher ones in case of emergen-
12 cies.

13 "Article 49. With the exception of the
14 higher court-martial, the bench of court-martials shall
15 be composed of four judges and one judicial officer.

16 "The judges in the preceding clause shall con-
17 sist of:

18 "(1) One field officer and three company
19 officers or two field officers and two company offi-
20 cers in case the accused is a private or non-com-
21 missioned officer.

22 "(2) Two field officers and two company offi-
23 cers in case the accused is a company officer or
24 warrant officer.

25 "(3) One general and three field officers,

1 or two generals and two field officers in case the
2 accused is a field officer.

3 "(4) Four generals in case the accused is a
4 general.

5 "The judges in the preceding clause shall not
6 be lower in rank than the accused.

7 "In case the court-martial is located in an
8 area cut off from communication, the judges of the
9 court-martial may be selected from judges ranking
10 higher or equal to the accused.

11 "Part 2" --

12 THE PRESIDENT: You will read that after the
13 recess. We will recess for fifteen minutes.

14 (Whereupon, at 1045, a recess
15 was taken until 1100, after which the
16 proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Howard.

4 MR. HOWARD: Mr. President, before continu-
5 ing the reading of the document before me, I would
6 like to say that I have just learned that Major
7 Blakeney, who is to cross-examine the witnesses who
8 have recently arrived from Russia, is ill.

9 THE PRESIDENT: Well, somebody else had
10 better get prepared to cross-examine unless major
11 Blakeney will be available within a day or two. I
12 mean either today or at latest Monday.

13 MR. HOWARD: I understand he will probably
14 be ready to proceed Monday.

15 THE PRESIDENT: Well, proceed with the
16 reading of your documents.

17 MR. HOWARD: (Reading)

18 "Chapter 2. Opening of trial.

19 "Article 399. The decision to dismiss the
20 accusation shall be given in the following cases:

21 "1. When the accusation is cancelled.

22 "2. When the accused is dead.

23 "3. When the case shall not be tried
24 under the provisions of Article 24 or Article 25.

25 "Article 400. When the decision is given

1 to dismiss the accusation by reason of the cancella-
2 tion of the accusation, no one shall institute an
3 accusation nor demand a preliminary trial again.

4 "Article 403. In case the accused is found
5 not guilty or there is no evidence to prove his crime,
6 he shall be given the verdict of 'not guilty.'

7 "Article 404. The decision to dismiss the
8 case shall be given in the following cases:

9 "1. When final judgment has been rendered.

10 "2. When the punishment to be assessed is
11 abolished in accordance with the law or ordinance
12 enacted after the crime was committed.

13 "3. When the accused should be exempt
14 from punishment.

15 "4. When an amnesty is proclaimed.

16 "5. When the case is barred by limitation.

17 "Article 410. When the accused is found
18 not guilty or is to be acquitted, or placed on pro-
19 bation, or the prosecution is dismissed by the court,
20 or is not within the jurisdiction of the court-martial,
21 or the accused is fined, the accused who is detained
22 in the case shall be released.

23 "When the court martial declares the dis-
24 missal of the accusation or non-jurisdiction, the
25 court may preserve the warrant of detention it has

1 already issued, or may issue a new one.

2 "When the prosecutor fails, within three
3 days, to institute an accusation on the case for
4 which he preserves or issues a new warrant of deten-
5 tion, or to send the case to the prosecutors of the
6 competent court martial, he shall at once release
7 the accused. The same shall hold good when the prose-
8 cutor who has received the case fails to institute
9 an accusation within five days.

10 "APPENDIX

11 "The date on which this law will be put in
12 force shall be regulated by an Imperial Ordinance
13 (It has been enforced since 1 April 1942 in accord-
14 ance with Imperial Ordinance No. 296, 1942)..."

15 - - -

16 I next offer in evidence defense document
17 2693 which is a number of excerpts from the Japanese
18 Criminal Code which was in effect on 28 July, 1942.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Defense document 2693
21 will receive exhibit No. 3353.

22 (Whereupon, the document above
23 referred to was marked defense exhibit No.
24 3353 and received in evidence.)
25

1 MR. HOWARD: (Reading)

2 "Excerpt from Military Criminal Code

3 "April 10th 1908, Law No. 46

4 "Chapter I.

5 "General Provisions.

6 "Article 8. Army personnel includes the
7 persons enumerated in the following:

8 "1. Persons on the active list of the Army.
9 However those who have not yet entered barracks or
10 those on leave are to be excluded.

11 "2. Reservists who have received orders
12 for calling out.

13 "3. Reservists who are taking up the
14 duties of army personnel in various units without
15 being called out.

16 "4. In addition to the persons enumerated
17 in the preceding two clauses, reservists who are wear-
18 ing army uniforms or who are actually fulfilling their
19 duties of service.

20 "5. Persons who have voluntarily enlisted
21 themselves in the National Army Conscript and are
22 actually in service.

23 "Article 9. Persons enumerated in the
24 following shall be included correspondingly as Army
25 Personnel:

- 1 "1. Army students.
2 "2. Civilian employees of the Army.
3 "3. Naval personnel taking up duties in
4 the Army.

5 "In case exception is to be established
6 with regard to persons as enumerated in No. 1 of
7 preceding clause, it shall be decided by order."

8 THE PRESIDENT: Did I see major Blakeney
9 in court while you were reading, Mr. Howard?

10 Mr. Levin.

11 MR. LEVIN: Mr. President, Mr. Blakeney
12 informed me that he was too ill to proceed today but
13 he felt reasonably certain that he would be well
14 enough to proceed with the cross-examination on
15 Monday. In the event Mr. Howard should finish be-
16 fore we adjourn today, Major Furness can proceed with
17 the examination of the Russian witnesses until ad-
18 journment time.

19 THE PRESIDENT: Mr. Howard.

20 MR. HOWARD: I next call the witness OYAMA
21 whose affidavit is defense document 2675.
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1 A Y A O O Y A M A, recalled as a witness on
2 behalf of the defense, having been previously
3 sworn, testified through Japanese interpreters
4 as follows:

5 DIRECT EXAMINATION

6 THE PRESIDENT: You are still on your former
7 oath.

8 BY MR. HOWARD:

9 Q Please state your name and address,
10 General OYAMA.

11 A My name is OYAMA, Ayao; my address is
12 Motomura-machi, Shinjuku-ku, Tokyo-to.

13 MR. HOWARD: I now ask that the witness be
14 shown defense document 2675.

15 Q Is that your affidavit and did you sign it?

16 A Yes, as you say.

17 Q Are the contents therein true and correct?

18 A Yes.

19 MR. HOWARD: I offer this affidavit in evi-
20 dence.

21 THE PRESIDENT: Colonel Mornane.

22 COLONEL MORNANE: If it please the Tribunal,
23 the prosecution objects to the reception of this
24 affidavit on the ground that it is hearsay and without
25 stating the source. In paragraph 2 at the foot of the

1 first page you will notice that the witness says,
2 "I learned as follows:" and then goes on to the
3 substance of the affidavit.

4 THE PRESIDENT: He could have learned it
5 from anybody anywhere. We may be prepared to allow
6 him to say what were the sources of his knowledge,
7 who gave it, who told him what he learned.

8 COLONEL MORNANE: I presume in that case,
9 your Honor, that my friend will ask him that before
10 getting on to the affidavit proper.

11 THE PRESIDENT: Subject to his stating the
12 sources of his information, the affidavit is admitted
13 on the usual terms.

14 CLERK OF THE COURT: Defense document 2675
15 will receive exhibit No. 3354.

16 (Whereupon, the document above
17 referred to was marked defense exhibit
18 No. 3354 and received in evidence.)

19 Q General OYAMA, this information that you
20 have given in the affidavit, did you learn of it in
21 your official capacity?

22 COLONEL MORNANE: I object to that question,
23 if the Tribunal please; it is leading.

24 THE PRESIDENT: What persons gave you that
25 information? What official positions did they hold

1 at the time?

2 THE WITNESS: I was Director of the Bureau
3 of Judicial Affairs of the War Ministry at that time
4 and I got this information from my subordinates.
5 This information I received from my subordinates
6 when I was Chief of the Bureau of Judicial Affairs
7 of the War Office.

8 THE PRESIDENT: What duty had your sub-
9 ordinates to possess that information?

10 THE WITNESS: At the time I was absent from
11 my office having been dispatched to the Southern
12 Areas. My subordinate who was commonly known as the
13 senior member of the bureau learned this information
14 as a part of his duties. Upon my return to my office
15 he gave me this information as part of his report on
16 affairs which occurred during my absence from the
17 office.

18 THE PRESIDENT: What is his name?
19

20 THE WITNESS: His name was OKI, Genzaburo.

21 THE PRESIDENT: Is there any reason why that
22 individual should not be called?

23 MR. HOWARD: I am informed by my Japanese
24 co-counsel that they do not know his whereabouts.

25 THE PRESIDENT: Is there any objection on
your part, Colonel Mornane; any further objection?

1 COLONEL MORNANE: I take it, your Honor,
2 that some search has been made for this subordinate
3 who can give this information. I understand the
4 witness himself is chief of the First Demobilization
5 Bureau and he is the man you would expect to have a
6 record of the whereabouts of all of the discharged
7 personnel from the Japanese Army. I therefore
8 respectfully suggest that your Honor should ask him
9 whether he has that information himself or whether he
10 has the source of that information.

11 THE PRESIDENT: He says he got it from a
12 subordinate. We know who the subordinate is now.
13 The only question is whether a proper search has been
14 made for the subordinate. A senior officer of that
15 kind should be easy to trace if he is available.

16 COLONEL MORNANE: What I was suggesting,
17 your Honor, was that this very man, by virtue of his
18 present official position, should be the man to know
19 where this officer is.
20

21 THE PRESIDENT: Do you know where that sub-
22 ordinate is?

23 THE WITNESS: With reference to the senior
24 member of the bureau, I think if a search is made his
25 whereabouts may be ascertained.

THE PRESIDENT: In those circumstances we

1 cannot allow this affidavit to be received or to
2 remain on our records.

3 MR. HOWARD: I have just been informed by
4 my Japanese co-counsel that a search has been made
5 for this man by the Demobilization Bureau. However,
6 we have been hearing hearsay evidence here and
7 evidence of this type from a superior of the Legal
8 Affairs Section -- it did not occur to me that this
9 man would be required.

10 THE PRESIDENT: In this case at all events
11 the Court wishes that the person who possessed the
12 information, who passed it to this witness, should
13 be called if he is available. If he is not available,
14 the position is different.

15 MR. HOWARD: All I can say at this time,
16 your Honor, is that a search has been made for the
17 man and he has not been found.

18 THE PRESIDENT: You allege that. Although
19 we know you are telling us what you believe to be the
20 truth, we want some proof or some admission by the
21 prosecution. Apparently they are not prepared to take
22 your word for it.

23 MR. HOWARD: If the man can be found, the
24 prosecution can use him later. That would be an excel-
25 lent way to impeach this witness if he is not telling

the truth.

1 It has been suggested that we could get an
2 affidavit or a certificate from the Demobilization
3 Bureau either that he can be found or cannot be found.
4

5 THE PRESIDENT: Do they know the whereabouts
6 of all these people? I do not know that they do;
7 they may.

8 I think you had better withdraw this
9 affidavit and present it again if you can show the
10 source, the person who gave the information, is not
11 available after proper search; otherwise we shall
12 have to reject it.

13 MR. HOWARD: I now ask that the witness be
14 shown defense document 2676.

15 (Whereupon, a document was
16 shown to the witness.)

17 Q Is that your affidavit, and did you sign it?

18 A Yes.

19 Q Are the contents therein true and correct?

20 A Yes.

21 MR. HOWARD: I offer defense document 2676
22 in evidence.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Defense document No. 2676
25 will receive exhibit No. 3354.

(Whereupon, the document above
referred to was marked defense exhibit
No. 3354, and received in evidence.)

MR. HOWARD: I read in evidence exhibit
No. 3354, beginning at paragraph 2:

"2. The law pertaining to the Punishment
of Prisoners of War was revised by Law No. 41 on
9 March 1943. There were two reasons for the revision.
First, as to the crimes committed by the prisoners of
war in the past, the Imperial Ordinance No. 225 of
25 October 1904, and the Law No. 38 of 28 February
1905 existed at the time of the Russo-Japanese war.
Later on, as the ordinary criminal code was revised
in 1908 with the complete reform of the penal system,
it was necessary to revise the names of the punishments
in the ordinance and the law pertaining to the punish-
ing of prisoners of war, so as to conform to those in
the criminal code and to make the terms of the criminal
code in the former completely in line with those in
the latter.

"Second, since the outbreak of the Pacific War,
the number of POWs taken by the Japanese army gradually
increased with the advancement of the war fronts, and
it became necessary from the viewpoint of keeping
surveillance to take precautionary steps to suppress

1 the possible uprisings of POWs as well as not to cause
2 any hindrance in the proper discharge of duties of
3 those in charge of guarding and superintending the
4 prisoners. And also in view of the up-scaling of the
5 penalties for the crimes committed against superiors,
6 and the crimes committed by groups in the military,
7 in the criminal code applicable to the Japanese
8 soldiers and civilians in the military service, etc.,
9 it was necessary to raise the penalty to keep in line
10 with the above mentioned up-scaling. These were
11 the two reasons why a revision to the law pertaining
12 to the punishment of POWs became necessary. Whereupon,
13 in the fall of, or the winter of 1942, the bill for
14 altering the Prisoner of War Law was taken up as one
15 being under the jurisdiction of the War Ministry in
16 connection with the preparation and the arrangement
17 of the bills to be presented in the next ordinary
18 session of the Diet as the usual practice of every
19 year. After consultation within the respective
20 departments and the sections of the Ministry of War,
21 and further consultations with the Bureau of Legal
22 Affairs, etc., the final draft was drawn up and approved
23 by the Minister; then, upon approval by the Cabinet
24 meeting, the bill was presented to the 81st session
25 of the Diet of the Government. After being passed by

1 the Diet, the bill became a law and was promulgated
2 and put in force as Law No. 41 of 1943, The Law
3 Pertaining to the Punishment of POWs (Court exhibit
4 1965A)."

5 MR. HOWARD: With the Tribunal's permission,
6 I will ask two or three additional questions.

7 Q Was the Legal Affairs Bureau consulted by
8 members of the War Ministry concerning the legality
9 of the revision of the law in question?

10 A Yes, we were consulted concerning this point.
11 Further consultation was made with the legislative
12 bureau concerning this matter, also with other concerned
13 authorities.

14 Q Were they informed that the revision was legal?

15 A Yes.

16 MR. HOWARD: You may have the witness.

17 THE PRESIDENT: Colonel Mornane.

18 CROSS-EXAMINATION

19 BY COLONEL MORNANE:

20 Q Did you give them that information yourself?

21 A The persons in charge of the offices concerned
22 gave this information, made this study of this problem.

23 Q You were in charge of the Bureau of Legal
24 Affairs yourself?

25 A Yes.

1 Q Were you consulted?

2 A No, not directly.

3 Q You are a very experienced legal officer?

4 You are a very experienced legal officer,
5 are you not?

6 A Yes. I have been a legal officer for many
7 years.

8 Q Did you advise your subordinates to give
9 them that advice, that the bill was legal?

10 A I did not give them any indication, inasmuch
11 as it was a part of their duty to thoroughly study the
12 question of the legality of the bill.

13 Q You did not consider it yourself?

14 A No, I did not.

15 Q And you were not asked by the War Minister
16 to consider it yourself?

17 A I was not directed directly by the War Minister.
18 However, concerning points of this sort, the Bureaus
19 and Divisions concerned studied the question in concert
20 with the offices which were in charge of the matter.
21 All concerned offices sent their representatives to
22 the Legislative Bureau, where the problem was studied
23 and the draft decided upon. After the draft was
24 approved by the War Minister it was presented to the
25 Diet, as I have mentioned in my affidavit.

1 Q Did the Vice Minister of War, KIMURA, have
2 anything to do with the preparation of this matter?

3 A The Vice Minister does not have any connection
4 in facilitating the thing.

5 THE MONITOR: In facilitating the matter the
6 Vice Minister did not have anything to do with it.

7 COLONEL MORNAME: That concludes the cross-
8 examination, if your Honor pleases.

9 MR. HOWARD: May the witness be excused?

10 THE PRESIDENT: Mr. Howard, about your first
11 affidavit withdrawn by leave, suppose it turns out
12 that this man is found and comes here and tells us
13 that he got his information from somebody else --
14 that he got it from B, who got it from C, who got it
15 from D? That frequently happens in the course of
16 departmental business. What will be the position
17 then? This man may have had the same duty to know
18 or to learn as the person for whom you are about to
19 make a search. Should that situation arise, of course,
20 I suppose you would approach the prosecution to see
21 whether they could not come to some arrangement with
22 you about it, but I don't want you to start a search
23 which inevitably must lead to that result.

24 Is there any further examination of this
25 witness?

1 MR. HOWARD: Mr. President, while the witness
2 is here I would like to read this other affidavit. I
3 believe that it has some evidentiary value, regardless
4 of what these other men say.

5 COLONEL MORNANE: If the Tribunal pleases,
6 the prosecution renews its objection; the whole of
7 the relevant part of the affidavit is covered by the
8 words "I learned".

9 THE PRESIDENT: We can hardly receive an
10 objection to a document not now before us, which has
11 been withdrawn by leave.

12 We will proceed with the next business if you
13 have finished with this witness.

14 He is discharged on the usual terms.

15 (Whereupon, the witness was excused.)

16 MR. HOWARD: I next call the witness SEMBA,
17 whose affidavit is defense document 2569.
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1 T S U T O M U S E M B A, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as follows:

4 DIRECT EXAMINATION

5 BY MR. HOWARD:

6 Q Please state your name and address.

7 A My name is SEMBA, Tsutomu. My address is
8 Kichijoji, Musashino-machi, Tokyo-to.

9 MR. HOWARD: I ask that the witness be shown
10 defense document 2569.

11 (Whereupon, a document was handed
12 to the witness.)

13 Q Is that your affidavit and did you sign it?

14 A Yes.

15 Q Are the contents therein true and correct?

16 A Yes.

17 MR. HOWARD: I offer defense document 2569
18 in evidence.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Defense document 2569
21 will receive exhibit No. 3355.

22 (Whereupon, the document above re-
23 ferred to was marked defense exhibit No. 3355
24 and received in evidence.)
25

MR. HOWARD: I read in evidence exhibit

1 No. 3355 beginning at paragraph 1.

2 "I, SEMBA, Tsutomu, was born in Tokyo on
3 February 2, 1909, graduated from the college of
4 engineering of the Tokyo Imperial University in March,
5 1933 and immediately entered the service of the Mili-
6 tary Arsenal at Osaka. I was in the service of the
7 Engineering Administration Section of the Maintenance
8 Bureau of the War Ministry from March, 1939 to Octo-
9 ber, 1942, and of the General Bureau of Aerial Ordi-
10 nance of the Munitions Ministry from March, 1944 to
11 the end of the war. Meanwhile I was commissioned as
12 technical major-colonel in April, 1942.

13
14 "The case of the employment of POW's, relating
15 to Exhibit 1970-A, 'Inquiry about the utilization of the
16 Manchurian Machine Tool Company for the purpose of
17 urgent aerial maintenance,' occurred at the time when
18 I was in the service of the Maintenance Bureau, and
19 it was directly in my charge.

20 "The note concerning the employment of POW's
21 in the Manchurian Machine Tool Company was issued
22 under the name of the Vice Minister, as entrusted
23 according to the 'Note Concerning the Disposal of
24 POW's at the Present,' (exhibit 1965-A) decided by
25 the War Minister on May 2, 1942.

"At that time, owing to the extreme shortage

1 of our domestic manpower, especially of technicians
2 and skilled workers, all our people were obliged to
3 work according to their talent and specialty, without
4 distinction of age and sex. So the Minister's policy
5 was to engage the prisoners in the sort and extent of
6 labor permissible by international laws and regula-
7 tions.

8 "As regards the conditions of the demand and
9 supply of machine tools at that time, our domestic
10 productivity was 40,000 pieces (about 400 million yen)
11 per year, while the total amount ordered was more than
12 250,000 pieces (about 2.5 billion yen). In addition,
13 owing to the scarcity of building materials, it was
14 so difficult to build a new factory that there remained
15 no alternative but to make the most of existing facil-
16 ities. In consequence, we learned to utilize wholly
17 and speedily the Manchurian Machine Tool Company which
18 had a lot of excellent facilities idle. While man-
19 power, especially brain and skilled labor, was then
20 more scarce in Manchuria than in Japan Proper, we
21 could not expect so much of the Manchurian workers,
22 not skilled, irregular in attendance and frequently
23 moving. It was also difficult for the Japanese
24 workers at home to move to Manchuria. Eventually, we
25 planned to choose and employ those prisoners with

1 mechanical skill and experience.

2 "The Army had absolutely no intention of
3 engaging the Manchurian Machine Tool Company in the
4 production of arms, and it remained in the position
5 of requisitioning and assisting the company as a re-
6 quisitioner of machine tools. So the company was kept
7 strictly distinct from the munitions industry which
8 was under the direct guidance of the Army. This com-
9 pany was under the jurisdiction of the Engineering
10 Agency of the Manchurian Economic Department. The
11 prisoners participated in the production of bench-
12 lathes and automatic lathes of the German Index type.

13 "The wording of 'urgent aerial maintenance'
14 in the 'Note of Utilizing the Manchurian Machine Tool
15 Company for the Purpose of Urgent Aerial Maintenance,'
16 (exhibit 1970) which was drafted by me was used with
17 the intention of engaging the company in the speedy
18 production of machine tools, thereby contributing indi-
19 rectly to the required production of aircrafts.

20 "We did not project and carry out the direct
21 production of arms and ammunition."

22 Your witness.

23 THE PRESIDENT: Colonel Mornane.
24
25

CROSS-EXAMINATION

1
2 BY COLONEL MORNANE:

3 Q You drafted exhibit 1970-A yourself, did you,
4 Witness?

5 A Yes.

6 Q And it was subsequently submitted to the
7 Vice Minister?

8 A Yes.

9 Q And before drafting that you considered what
10 now appears as exhibit 1965-A in this case?

11 A I don't understand the meaning of the question.

12 Q In your affidavit you say the note "was issued
13 under the name of the Vice Minister, as entrusted
14 according to the 'Note Concerning the Disposal of
15 Prisoners of War at the Present,' (exhibit 1965-A)."

16 A It was as written in my affidavit.

17 Q What do you mean by "as entrusted according
18 to the 'Note Concerning the Disposal of Prisoners of
19 War'?"
20

21 A In so far as it was not in violation of inter-
22 national law it was the state policy to use prisoners
23 of war in important industries.

24 Q What do you know about international law,
25 Witness?

A For example, the use of POW's in the direct

1 manufacture of munitions and ammunition or at the
2 front is prohibited by international law.

3 THE PRESIDENT: We will adjourn until half-
4 past one.

5 (Whereupon, at 1200, an adjournment
6 was taken.)
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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

2 MARSHAL OF THE COURT: The International
3 Military Tribunal for the Far East is now resumed.

4 THE PRESIDENT: Captain Kraft.

5 LANGUAGE ARBITER (Captain Kraft): If the
6 Tribunal please, we submit the following language
7 corrections: Reference exhibit 2202-A, record page
8 15,753 -- 21 January 1947: Line 18, delete "our,"
9 substitute "the." Line 20, delete "our" and substi-
10 tute "the." Line 25, delete "are not discussed,"
11 substitute "is not the question." Line 4, delete
12 "TOKAWA," substitute "SOGO."

13 THE PRESIDENT: Thank you, Captain Kraft.
14 General Vasiliev.

15 GENERAL VASILIEV: If the Tribunal please,
16 the prosecution witnesses pertaining to the Russian
17 phase are now in the building. They are: Japanese
18 prisoners of war TAKEBE, Rokuzo; MATSUURA, Kusuo;
19 MURAKAMI, Keisaku; Russian witnesses: Chernopyatko;
20 Batarshin. The third Russian witness, Budarin, is
21 delayed in Vladivostok due to his illness. Since the
22 time of the arrival of these witnesses no plane has
23 arrived here from Vladivostok because of bad weather.
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1 This witness is expected in the nearest future.

2 The Japanese witnesses will be presented by
3 Colonel Ivanov; the Russian witnesses will be presented
4 by Colonel Smirnov.

5 What is the wish of the Tribunal concerning
6 the presentation of these witnesses? Does the Tribunal
7 desire to hear them now?

8 THE PRESIDENT: Is there any reason why we
9 should not complete KIMURA's case, which we may be
10 able to do today, and take the Russian witnesses on
11 Monday?

12 GENERAL VASILIEV: We have no objections to
13 that, and we shall comply with the desire of the
14 Tribunal.

15 THE PRESIDENT: We will take the Russian
16 witnesses on Monday, as already arranged.

17 MR. FURNESS: I assume, of course, that in-
18 cludes the Japanese nationals who have come here from
19 Russia.

20 THE PRESIDENT: It includes the lot.

21 If we finish the KIMURA case early today we
22 will have time then, perhaps, to take one of those
23 Russian witnesses, at least. They had better be kept
24 handy in that event.

25 Colonel Mornane.

1 T S U T O M U S E M B A, called as a witness on
2 behalf of the defense, resumed the stand and
3 testified through Japanese interpreters as
4 follows:

5 CROSS-EXAMINATION

6 BY COLONEL MORNANE (Continued):

7 Q Witness, in your affidavit you say, "So
8 the Minister's policy was to engage the prisoners in
9 the sort and extent of labor permissible by inter-
10 national laws and regulations." And you also refer
11 to exhibit 1965-A in that affidavit. I will now read
12 from paragraph 1 on page 31 of the English transla-
13 tion of exhibit 1965-A:

14 "Prisoners of war who are white persons
15 shall be imprisoned in Chosen, Taiwan, Manchuria,
16 and China successively to be employed in the expan-
17 sion of our production and on work connected with
18 military affairs."

19 Do you regard that statement as being a
20 statement of what is permissible under international
21 law?

22 A In so far as my understanding of the exhibit
23 is concerned, I do not think that is in violation of
24 international laws and regulations. My reasons for
25 so saying are --

1 Q And that is the basis of your statement
2 in the affidavit?

3 A Yes.

4 Q And this document 1970-A, exhibit 1970-A,
5 which you drafted, was subsequently approved by the
6 accused KIMURA?

7 A The drafting took place following the issuance
8 of a notification by the Vice Minister of War report-
9 ing an approval given by the Minister of War with
10 regard to the disposition of prisoners of war. This
11 refers to the passage from exhibit 1965-A that has
12 just been read. Those of us who were engaged in such
13 activities as I have related have applied the princi-
14 ples of the notification sent to us by the Ministry
15 of War in so far as it related to the work with which
16 we were charged, and our duty was to materialize in
17 our own respective fields the notification sent us.
18 The policy itself was approved by the Minister of War,
19 and the concrete materialization of the matters con-
20 tained therein, that was our function. And since these
21 matters were one of the matters entrusted to the
22 Vice Minister of War, the results of the work carried
23 out were naturally later on reported by the Vice
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1 Minister of War to the War Minister. In view of the
2 fact that the work was carried out in accordance with
3 the policy and intention approved by the Minister of
4 War, and since the matter was a matter entrusted to
5 the Vice Minister of War, the responsibility for the
6 work after being carried out rests with the War
7 Minister and not with the Vice Minister.

8 Q Witness, all I asked you was whether the
9 Vice Minister approved of this document?

10 A Yes.

11 COLONEL MORNANE: That concludes my cross-
12 examination.
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THE PRESIDENT: Mr. Howard.

MR. HOWARD: Mr. President.

REDIRECT EXAMINATION

BY MR. HOWARD:

Q Did you finish the answer that you started on one of the questions concerning the reasons you thought that was in conformity with international law?

A No, my reply was insufficient.

Q Please finish your answer.

A Belligerent states have the right to engage in labor prisoners of war with the exception of officers and those qualified to receive the treatment of officers.

THE PRESIDENT: We do not want him to tell us what is international law in this respect.

I have a question on behalf of a Member of the Tribunal. Did the Vice-Minister approve the form or the substance of the rule?

THE WITNESS: Yes.

THE PRESIDENT: Which? The form, or the substance, or both?

THE WITNESS: He approved both the form and substance of the rule on the basis of his belief that it was not in violation of international laws and regulations.

1 THE PRESIDENT: Well, he does not know what
2 his beliefs were.

3 MR. HOWARD: May the witness be excused on
4 the usual terms, your Honor?

5 THE PRESIDENT: He is excused accordingly.

6 (Whereupon, the witness was excused.)

7 MR. HOWARD: I next call the witness HIGASA,
8 whose affidavit is defense document 2692.

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1 R Y O H E I H I G A S A, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. HOWARD:

7 Q Mr. HIGASA, please state your name and
8 address.

9 A My name is HIGASA, Ryohei. My address,
10 Marubayashi, Tanomura, Tomata-gun, Okayama Prefecture.

11 MR. HOWARD: I ask that the witness be shown
12 defense document No. 2692.

13 Q Is that your affidavit, and did you sign it?

14 A Yes, I have signed it.

15 Q Are the contents therein true and correct?

16 A Yes.

17 MR. HOWARD: I offer in evidence defense
18 document 2692.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Defense document 2692
21 will receive exhibit No. 3356.

22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 3356 and received in evidence.)

25 MR. HOWARD: I read in evidence exhibit

1 No. 3356, beginning at paragraph 1.

2 "1. My name is HIGASA, Ryohei.

3 "At present I reside at Marubayashi, Tanomura,
4 Tomata-gun, Okayama Prefecture. I was born in Okayama
5 Prefecture on December 10, 1904. After graduating from
6 the Military Staff College in April 1940, I held
7 various offices in the army. During the period from
8 March 1942 up to March 1944 I took charge of administra-
9 tion matters concerning prisoners of war as staff
10 officer in the Tobu Army. At the time of surrender, I
11 was in the rank of Lieutenant Colonel.

12 "2. The Tobu Army document No. 41 dated
13 2 October 1942, and entitled 'Matters Concerning the
14 Employment of POW' (exhibit No. 1967) was issued when
15 I was staff officer in the Tobu Army. This was made
16 on the basis of two different documents, one being
17 'Matters Concerning the Treatment of POW' (exhibit
18 No. 1965-A) which was decided by the Minister of War
19 and the other being 'POW Employment Regulations' (ex-
20 hibit No. 3050) which had already been in force at that
21 time. The document 'Matters Concerning the Employment
22 of POW' did not contain any plan of employing prisoners
23 of war in the labor directly connected with military
24 operations such as production and transportation of
25 arms and ammunition. As a matter of fact at no time

1 were prisoners of war employed in such kind of labor
2 as mentioned above."

3 Your witness.

4 THE PRESIDENT: Colonel Mornane.

5 COLONEL MORNANE: Just one question, if the
6 Tribunal please.

7 CROSS-EXAMINATION

8 BY COLONEL MORNANE:

9 Q What is the Tobu Army?

10 A The Tobu Army refers to one of the four army
11 districts into which Japan proper was divided at the time
12 namely, the Hokubu or the Northern Army, Tobu or Eastern
13 Army, the Chubu, the Central Army, and the Seibu, the
14 Western Army.

15 COLONEL MORNANE: That is all.

16 MR. HOWARD: Mr. President, may the witness
17 be excused on the usual terms?

18 THE PRESIDENT: He is excused accordingly.

19 (Whereupon, the witness was excused.)

20 MR. HOWARD: Next on the order of proof is
21 defense document 954, but we wish to pass this one
22 for the same reason that we passed the other two affi-
23 davits.
24

25 I next call the witness MIKI, whose affidavit
is defense document 894.

1 Y O S H I H I D E M I K I, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. HOWARD:

7 Q Mr. MIKI, please state your name and address.

8 A My name is MIKI, Yoshihide. My address,
9 No. 229, 1-chome, Saginomiya, Nakano-ku, Tokyo.

10 MR. HOWARD: I ask that the witness be shown
11 defense document 894.

12 Q Is that your affidavit, and did you sign it?

13 A This is my affidavit, and I have signed it.

14 Q Are the contents therein true and correct?

15 A Yes.

16 MR. HOWARD: I offer in evidence defense docu-
17 ment 894.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Defense document 894
20 will receive exhibit No. 3357.

21 (Whereupon, the document above
22 referred to was marked defense exhibit
23 No. 3357 and received in evidence.)
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1 MR. HOWARD: I read in evidence exhibit
2 No. 3357, beginning at paragraph 1:

3 "1. I served as Chief of the Medical Affairs
4 Bureau of the War Ministry during Lieutenant General
5 KIMURA's tenure of office as Vice-Minister of War.

6 "2. Chiefs of bureaus were not directly
7 subordinate to the Vice-Minister. However, the
8 latter supervised the business of the bureaus.

9 "3. Chiefs of bureaus were directly sub-
10 ordinate to the Minister of War. They conducted
11 the business under their respective charge by order
12 of the Minister to whom they were each responsible.

13 "4. Insofar as the Medical Affairs Bureau
14 was concerned, the business delegated to the Vice-
15 Minister was of minor importance, being related to
16 such matters as examination of medical supplies.

17 "5. I observed that the primary duties of
18 the Vice-Minister were to strive for harmony and
19 smooth operation of business within the ministry and
20 to assist the Minister as his aide.

21 "6. Premier and War Minister TOJO carried
22 out his duties with despatch, accuracy and decision,
23 setting himself as an example of effective leadership.

24 "7. The conferences of bureau chiefs were
25 presided over by Minister TOJO. At these meetings,

1 each bureau chief by turn reported on necessary
2 matters under his charge, and to this the Minister
3 gave his views and directions. Vice-Minister
4 KIMURA spoke at these conferences very rarely and
5 in my recollection his statements were confined mostly
6 to matters related to business within the ministry.

7 "At the conferences of bureau chiefs I
8 have never heard of any report on the protests
9 against the maltreatment of prisoners of war during
10 Vice-Minister KIMURA's tenure of office.

11 "8. The orders of the War Minister were
12 generally stipulated as departmental ordinances,
13 notifications, instructions, etc., and only when
14 orders were issued was the Minister's name used.
15 On other occasions the Minister's name was not used
16 and instead, in accordance with business custom,
17 the Vice-Minister's notification by order was issued.

18 "The Vice-Ministerial notification by
19 order was the method employed when orders approved
20 by the Minister were transmitted in writing.

21 "9. The power to command, appoint and
22 dismiss, and punish chiefs of bureaus was held by
23 the Minister. The Vice-Minister had no such power.
24 Except on the less important of the matters delegated
25 to him, the Vice-Minister had no power of decision

1 and, of course, no power of command outside the
2 ministry. Consequently, although it was his
3 responsibility to assist the Minister, he was not
4 in a position of responsibility with regard to ex-
5 ternal matters."

6 Your witness.

7 THE PRESIDENT: Colonel Mornane.

8 CROSS-EXAMINATION

9 BY COLONEL MORNANE:

10 Q The Vice-Minister was actually, after the
11 War Minister, the senior ranking minister in the
12 War Ministry, was he not?

13 A I could not quite comprehend the latter
14 part of the question. May I have it repeated?

15 COLONEL MORNANE: Will the court reporter
16 read it.

17 (Whereupon, the question was read
18 by the official court reporter.)

19 COLONEL MORNANE: Senior ranking officer.

20 A Yes.

21 Q And before any important matters could be
22 formulated, the bureau chiefs had to get the authority,
23 the consent, of either the Minister for War or the
24 Vice-Minister for War.

25 A The approval of the War Minister was always

1 necessary, but the approval of the Vice-Minister of
2 War was not necessary and various measures could be
3 carried into effect without his consent.

4 Q I suggest to you, witness, that in important
5 matters you had to get the approval either, one, of
6 the Minister of War, or if you didn't get his
7 approval, the approval of the Vice-Minister for War
8 was sufficient.

9 A It was not possible to undertake any important
10 matter without the approval of the War Minister.

11 THE MONITOR: Japanese court reporter.

12 (Whereupon, the Japanese court reporter
13 read.)

14 THE MONITOR: Slight correction: "It was
15 not possible to carry out any important matter
16 with the approval of the Vice-Minister of War. The
17 approval of the War Minister was necessary."

18 Q The affairs of the War Ministry were conducted
19 in accordance with the War Ministry General Affairs
20 Regulations, were they not?

21 A Yes.

22 COLONEL MORNANE: Can the witness be shown
23 exhibit 3348. It was put in this morning.

24 Language Section, I will now be referring
25 to Article 30 on page 10 of the English copy.

1 Q I refer you, witness, to Article 30.

2 Have you found it?

3 A I have found it.

4 Q That article reads as follows: "Among
5 matters formulated by each section as to those which
6 are important, the Bureau Chief concerned, at the
7 time of the beginning of the formulation or at any
8 other appropriate time, shall express his views directly
9 to the Minister or to the Vice-Minister to get his
10 private consent for its execution."

11 Therefore, under that article, the consent
12 of either the Minister or the Vice-Minister was
13 required for important matters.

14 A Of course, it is very desirable to obtain
15 the approval both of the War Minister and the War
16 Vice-Minister, but it is not against violations -- it
17 is not violation of regulations to carry out any
18 matters with the direct approval of the War Minister
19 and not obtaining the approval of the Vice-Minister.
20

21 COLONEL MORNANE: That concludes the cross-
22 examination.

23 THE PRESIDENT: On behalf of a Member of the
24 Tribunal, I wish to ask the following question: When
25 the War Minister decides the policy, has that policy
to be approved by the Vice-Minister?

MIKI

1 THE WITNESS: My belief is that no
2 approval was necessary.

3 THE PRESIDENT: Mr. Howard.

4 MR. HOWARD: Mr. President, may the witness
5 be excused on the usual terms?

6 THE PRESIDENT: He is released accordingly.

7 (Whereupon, the witness was excused.)

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1 MR. HOWARD: I next call the witness TANAKA,
2 Nobuo, whose affidavit is defense document 2573.

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4 N O B U O T A N A K A, called as a witness on be-
5 half of the defense, being first duly sworn,
6 testified through Japanese interpreters as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. HOWARD:

10 Q General TANAKA, please state your name and
11 address.

12 A My name is TANAKA, Nobuo; my address is No.
13 3 Kanbe Honda-machi, 4-chome, Suzuga-gun, Mie Prefecture.

14 MR. HOWARD: I ask that the witness be shown
15 defense document 2573.

16 (Whereupon, a document was handed
17 to the witness.)

18 Q Is that your affidavit and did you sign it?

19 A This is my affidavit and it bears my sig-
20 nature.

21 Q Are the contents therein true and correct?

22 A Yes, true and correct.

23 MR. HOWARD: I offer in evidence defense
24 document 2573.

25 THE PRESIDENT: Admitted on the usual terms.

1 CLERK OF THE COURT: Defense document 2573
2 will receive exhibit No. 3358.

3 (Whereupon, the document above
4 referred to was marked defense exhibit
5 No. 3358 and received in evidence.)

6 MR. HOWARD: I read in evidence exhibit No.
7 3358, beginning at paragraph 1:

8 "1. I, TANAKA, Nobuo, held the rank of
9 Lieutenant-General. I was born on October 30, 1890,
10 and am presently living in No. 3 Kanbe-Honda-machi,
11 4-chome, Suzuga-shi, Mie Prefecture.

12 "I was appointed Commander of the 33rd
13 Division in May, 1944. In September, 1944, when I
14 was retreating with my troops from the front after a
15 battle at Imparle, General KIMURA arrived in Burma
16 as the Commander of the Burma Area Army.

17 "2. On arriving at the Tenasserim district
18 on May 28, 1945, I met General KIMURA at Moulmein.
19 On that occasion he urged the necessity of enforcing
20 strict military discipline and being good to the in-
21 habitants; he told me to treat them with warmth
22 and kindness because the same Burmese would help the
23 Japanese Army out of difficulties and that military
24 operations could not be carried out without their
25 co-operation.

1 "3. Since then I have been in charge of
2 the defense of the Tenasserim district south of the
3 Salween River. In those days leaders of the guerrilla
4 units backed by the British-Indian parachute units
5 frequently landed in this district and threatened the
6 rear of the Japanese units.

7 "In the vicinity of Kalagon Village, a para-
8 chute corps of the British-Indian Army had built its
9 base, and in concert with the insurgent Burmese Army,
10 came to disturb the district under my garrison charge.
11 The British-Indian Army won over the native people
12 by dropping from the airplanes not only arms and pro-
13 visions for the guerrilla corps but also necessities
14 for the people's cultural life, so that the power of
15 the guerrilla corps was increased day by day. On the
16 middle of June, 1945, I was obliged to order Colonel
17 TSUKADA, the 215th Infantry Regimental Commander, to
18 suppress this guerrilla corps.

19 "On this occasion, I had the Colonel take
20 clothes and provisions to the people for their pacifi-
21 cation. But most unhappily the Kalagon Incident
22 broke out due to an abnormal action of the Commander
23 of the Battalion that attacked this village. I had
24 always been particularly careful about my subordinates'
25 treatment of the natives. But I never knew about the

1 so-called 'Kalagon Incident' until my battalion
2 commander, company commander and others were summoned
3 by the British Army after the close of the war. I
4 had already moved to Siam. Even when I met Regimental
5 Commander immediately before the termination of the
6 war, he did not give me any report about this event.
7 Consequently, I did not, on my part, give any report
8 to Area Army Commander KIMURA concerning the same
9 event either when I went to Moulmein on August 15 to
10 pay him my compliments on my way to Siam or when I
11 met him in Bangkok where he stopped on his way back
12 from Singapore after the termination of the war. It
13 was because at that time I myself was quite ignorant
14 of the happenings of the 'Kalagon' Incident.

15 "I, as the commanding officer concerned, was
16 put in prison as a war suspect, on January 22, 1946,
17 in connection with this affair. But I had neither
18 given any order for such act of atrocity nor had re-
19 ceived any report on it. Since the Regiment Commander
20 stated at the War Tribunal at Rangoon that he did not
21 report this case to me, the Division Commander, it was
22 made clear that I had no connection at all with the
23 matter but simply was giving orders concerning tact-
24 ical matters only. So I was released on December 16,
25 1946, and served with a working unit at the 'Aron

1 Camp' in the suburb of Rangoon. On August 4, 1947,
2 I embarked on the last steamer bound for Japan.
3 The case was dropped not only for me as the Division
4 Commander but even for the Regiment Commander also.
5 Those who were punished were only the Battalion
6 Commander and some of the personnel ranking below
7 him. It was on February 6, 1946, that I reported
8 the Kalagon Case to the Commander of the Area Army,
9 when I was temporarily released on bail from the
10 Moulmein Prison and went to the Camp Insen to attend
11 the meeting of the Anglo-Japanese War Research Society.
12 I met General KIMURA there and directly reported the
13 matter to him. The General was very much surprised
14 and repeatedly said to me that he felt exceedingly
15 sorry about it. According to what I have picked up
16 while I was in prison, it seemed to me that there
17 were one or two other illegal acts besides the
18 Kalagon case. In fact, two officers who were under
19 my command were arrested and brought to Burma after
20 the demobilization. But during the war, I had never
21 known of such a case, or given any order in connec-
22 tion therewith. I did not undergo any investigation
23 and I am left as not involved. So I did not report
24 such cases during the wartime to the Headquarters of
25 Area Army nor did I receive any order about such

1 matters from the Headquarters of the Area Army."

2 Your witness.

3 COLONEL MORNANE: If the Tribunal please,
4 there will be no cross-examination of this witness.

5 MR. HOWARD: Mr. President, we ask that the
6 witness be excused on the usual terms.

7 THE PRESIDENT: He is released accordingly.

8 (Whereupon, the witness was excused.)

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10 MR. HOWARD: I next call the witness HONDA
11 whose affidavit is defense document 2511.
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1 M A S A K I H O N D A, called as a witness on be-
2 half of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. HOWARD:

7 Q General HONDA, please state your name and
8 address.

9 A I am HONDA, Masaki, formerly Lieutenant-
10 General; I presently reside at No. 168, Zaimok Uza,
11 Kamakura.

12 MR. HOWARD: I ask that the witness be shown
13 defense document 2511.

14 (Whereupon, a document was handed
15 to the witness.)

16 Q Is that your affidavit and did you sign it?

17 A This is my affidavit, and I have signed it.

18 Q Are the contents therein true and correct?

19 A Yes, true and correct.

20 MR. HOWARD: I offer defense document 2511
21 in evidence.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Defense document 2511
24 will receive exhibit No. 3359.

25 (Whereupon, the document above

referred to was marked defense exhibit
No. 3359 and received in evidence.)

MR. HOWARD: I read in evidence exhibit No.
3359, beginning at paragraph 1:

"1. I am a former Lieutenant-General and my
name is HONDA, Masaki. I was born on 17 May 1889.
I am at present residing at No. 168, Zaimok Uza,
Kamakura City. Having graduated from the Army Cadet
School in the year of 1910, I was commissioned as a
Sub-Lieutenant. After occupying various posts, I was
appointed the Commander of the 33rd Unit under the
Burma Area Army in April 1944 and held the post until
the end of the war. On 4 August 1947 I got on board
the last ship at Rangoon and came back home.

"2. When General KIMURA arrived at his post
around the middle of September, 1944, the 33rd Unit
was being engaged in military operations in the
neighborhood of Tung-Ting in parallel with an attack-
ing advance on the Unnan Expeditionary Army. Owing
to the unfavorable progress of the combat, however,
we continued retreating, taking part in a combat in
the vicinity of Meiklila at the battle of the Irrawaddy
River. From that time onward, we marched on southward
along the eastern side of the Sittang River, making a
resistance step by step.

1 "From the middle of May, 1945, having grad-
2 ually gathered our troops in the vicinity of the Sit-
3 tang, the unit took charge of the defense of Tenas-
4 serim region, east of the Sittang and west of the
5 Salween river on the one hand and, on the other,
6 checking an advance of the Anglo-Indian Army till
7 the termination of the war.

8 "3. I have read the court exhibits concern-
9 ing the alleged atrocities in Burma submitted to this
10 Tribunal. Of the alleged crimes mentioned in court
11 exhibits No. 1537-A, No. 1549 to No. 1553-A inclusive,
12 I state that no orders of any kind were given by me
13 concerning the matters and I knew nothing about the
14 illegal acts mentioned at all, notwithstanding that
15 they appear to have happened in the zone of operations
16 under my charge. I learned, for the first time, part
17 of the facts mentioned in the exhibits, when the Japa-
18 nese war criminal suspects were on trial in Burma after
19 the close of the war. No reports whatever were tendered
20 by the unit to the Headquarters of the Area Army or no
21 orders of any kind were received by the unit from the
22 headquarters concerning these matters during the war-
23 time.
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"4. I was confident that we strongly maintained military discipline and morale as well and, consequently, could render services in the cause of good understanding and harmony between the Japanese and Burmese by virtue of the efforts exerted by our officers and men in compliance with the spirit and intentions of General KIMURA, the Commander in Chief of the Area Army, though we were in such miserable conditions that the 33rd unit was hard pressed and continually retreating from September 1944. I was rather surprised to hear of the atrocities mentioned in the above numbered exhibits.

"5. General KIMURA showed his way of command through his address after arrival as the commander of Burma Area Army. Also, in the several meetings of headquarters of the area army through his staff and he also sent me private correspondence six or seven times; furthermore, I met him three times directly during the war. It is therefore but natural that I should have well understood his way of command. At all times, he laid emphasis on the strict enforcement of military discipline, maintenance of morale, and the proper use of reward and punishment.

"In addition to that, he told us to treat the Burmese populace with precaution and sympathy, so that we might win their hearts and enhance the support of the

1 Imperial Army. We were told to put 'The Battlefield
2 Instructions' in practice, and if we might be later
3 forced to abandon Burma as a result of a battle lost,
4 'We should leave, at least, such an impression on the
5 minds of the Burmese populace that the morality and
6 good will of the Imperial Army were high, so that these
7 immensely heavy sacrifices should not have been in
8 vain.'

9 "As General KIMURA always repeated and
10 emphasized such, we strove to realize his spirit and
11 intentions, resorting to every possible means to do so."

12 Your witness.

13 COLONEL MORNANE: If the Tribunal pleases, there
14 will be no cross-examination.

15 I would draw attention to the fact that refer-
16 ences to the prosecution's evidence have already been
17 given during the prisoner of war phase.

18 MR. HOWARD: Mr. President, may the witness be
19 excused on the usual terms?

20 THE PRESIDENT: He is excused accordingly.

21 (Whereupon, the witness was ex-
22 cused.)

23 MR. HOWARD: I next call witness ICHIDA, whose
24 affidavit is defense document 2574.
25

J I R O I C H I D A, recalled as a witness on behalf of the defense, having been previously sworn, testified through Japanese interpreters as follows:

THE PRESIDENT: You are still on your former oath.

DIRECT EXAMINATION

BY MR. HOWARD:

Q General ICHIDA, please state your name and address.

A My name is ICHIDA, Jiro. My address is Showa-dori, Nakama-machi, Onuma-gun, Fukuoka Prefecture.

MR. HOWARD: I ask that the witness be shown defense document 2574.

(Whereupon, a paper was handed to the witness.)

Q Is that your affidavit, and did you sign it?

A Yes.

Q Are the contents therein true and correct?

A Yes.

MR. HOWARD: I offer in evidence defense document 2574.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2574 will receive exhibit No. 3360.

(Whereupon, the document above

1 referred to was marked defense exhibit
2 No. 3360 and received in evidence.)

3 MR. HOWARD: I read into evidence exhibit No.
4 3360, beginning at paragraph 1:

5 "I, ICHIDA, Jiro, appeared as a witness in the
6 above styled case on September 4, 1947. My former
7 affidavit is exhibit 3089.

8 "I was a Major General at the end of the war,
9 stationed in Burma under General KIMURA after surrender.
10 I assisted the Chief of Staff in war times, and was act-
11 ing Chief of Staff, after surrender. Concerning Court
12 exhibit 1539 in which is mentioned 27 Burmese as being
13 missing in July of 1945 and which is also known as the
14 Moulmein case, I state as follows:

15 "After the surrender, around the beginning of
16 October 1945, I had occasion to talk to Commander of
17 Gendarmerie KUME who was on his way from a place about
18 50 kilometre southeast of Moulmein to Rangoon with his
19 subordinates by order of the British Army. He had
20 stopped to rest at Thongwa village, southeast of Moul-
21 mein.
22

23 "The Headquarters of the Burma Area Army was
24 then located in Thongwa village about 30 kilometers to
25 the southeast of Moulmein. In this conversation Com-
mander KUME told me about the so-called Moulmein Inci-

1 dent for the first time. Commander KUME told me that
2 the Burmese who had been kept in custody at Moulmein had
3 been handled by the chief of the detachment of the Moul-
4 mein military police at his, the chief of the detach-
5 ment's, own discretion, and without orders from anyone.
6 Later on after the ranking officers of the Area Army
7 in Burma had been moved to the POW camp in Rangoon as
8 prisoners, around the end of October 1945, I informed
9 General KIMURA of the Moulmein case. General KIMURA
10 told me that that was the first time he had heard of
11 the case. Military Headquarters of the Area Army in
12 Burma had not issued orders nor received any informa-
13 tion regarding the matter ~~before~~ the termination of the
14 war.

15 "I have read all of the Court exhibits con-
16 cerning atrocities in Burma presented to this Tribunal.
17 Reports concerning such matters would have come to me
18 and I in turn would have transmitted them to General
19 KIMURA. No reports concerning the illegal acts mentioned
20 in the exhibits read by me were received; consequently
21 there was none to go to General KIMURA."

22
23 I now ask that the witness be shown defense
24 document No. 2770.

25 (Whereupon, a paper was handed to
the witness.)

Q Is that your affidavit, and did you sign it?

A Yes.

Q Are the contents therein true and correct?

A Yes.

MR. HOWARD: I offer in evidence defense document 2770.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2770 will receive exhibit No. 3361.

(Whereupon, the document above referred to was marked defense exhibit No. 3361 and received in evidence.)

MR. HOWARD: I read into evidence exhibit 3361, beginning at paragraph 2:

"2. Commanding General of the Army KIMURA regarded the maintenance and enforcement of military discipline as one of the most important items for command. He took every available opportunity for its materialization. I will enumerate some of the concrete examples, as follows:

"3. Immediately after General KIMURA was appointed Commander of the Burma Area Army, that is, for about a month from the last part of September 1944, he advanced the command post to Maymyo where he conducted operations himself and invited there the Commander and

1 the Chief of Staff of the 15th Army and the Chief of
2 Staff of 33rd Army to give them a strict direction con-
3 cerning maintenance of military discipline. During that
4 while, he also inspected the military discipline of the
5 units staying at Maymyo.

6 "In the beginning of February 1945, he inspected
7 the 28th Army Headquarters at Taigfi, when he encouraged
8 the maintenance of military discipline. Then he re-
9 viewed military discipline of the units staying there.
10 Thereafter, he advanced as far as Karo where he invited
11 the Commander of the 33rd Army for instructions. Also
12 he inspected the front line of the 33rd Division on the
13 river Irrawaddi, enhancing morale and discipline.

14 "IV. Even after the Area Army Headquarters
15 withdrew to Moulmein at the end of April, 1945, Commander
16 KINURA went to the front line. He visited the Head-
17 quarters of 31, 33, 49, 18 Divisions and 33 Army with a
18 view of maintaining the military discipline. He also
19 summoned to the Area Army Headquarters the commanders of
20 15th Army, 31st, 33rd, 49th Divisions, 101st, 24th Mixed
21 Brigades which withdrew to Moulmein one by one, commander
22 of gendarmerie and staff officers of each Army and
23 Division, and he gave instructions that they, in command-
24 ing their subordinates, should put top priority on the
25 maintenance of discipline of Japanese soldiers and

1 winning the popularity of natives. At the Headquarters
2 conference he repeated his instructions again and again
3 to make them permeate among the whole army. He also
4 dispatched the staff officers and personnel of the
5 Headquarters to the front line to have them inspect
6 discipline conditions.

7 "V. The foregoing inspection showed that all
8 bad conditions, such as disorder caused by defeat and
9 interruption of transportation and communication
10 facilities, accumulated to make some portions of each
11 corps slip from the hands of the commanders and they
12 therefore made every possible efforts to pick them up.
13 At the same time, in accordance with the intentions of the
14 Area Army Commander they inspected the discipline in the
15 battlefield so often that they found that it was main-
16 tained very strictly as far as their eyes could reach.

17 "VI. Commander KII'URA severely punished those
18 who broke the discipline.
19

20 "For example, he punished the chief of staff of
21 the Area Army, senior staff officer in the first section
22 of headquarters, adjutant general, junior adjutant, and
23 commander of 24 Mixed Brigade for careless treatment of
24 secret documents of the army. He punished a senior
25 staff officer of the 2nd Section for his continuing con-
~~tact with a priest named NAGAI contrary to the intentions~~

1 of the Area Army Commander. He also punished the
2 chief of guards of the Area Army for lack of control of
3 his subordinates. He punished the head of the prison
4 where the Japanese soldiers were interned for his bad
5 management."

6 Your witness.

7 THE PRESIDENT: Will there be any cross-
8 examination?

9 COLONEL MORNANE: There will be a few questions.

10 THE PRESIDENT: We will take them after the
11 recess.

12 We will recess for fifteen minutes.

13 (Whereupon, at 1445, a recess was
14 taken until 1500, at which time the proceed-
15 ings were resumed as follows:)
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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Colonel Mornane.

CROSS-EXAMINATION

BY COLONEL MORNANE:

Q Witness, at the end of your affidavit you
say that the accused KIMURA punished the chief of
the guards of the Area Army for lack of control of
his subordinates. What guards were they?

A By chief of guards I mean the chief of
guards of the Area Army.

Q Did those guards have anything to do with
the prison camps?

A No, no connection whatsoever. The duty of
these guards was to guard the headquarters of the
Area Army.

Q Well, now, with regard to the prison where
the Japanese soldiers were interned, was that at
Rangoon?

A Yes, yes, at Insein.

Q Insein. Was that at the same place where
the Allied prisoners of war were held?

A No.

Q Anywhere near there?

A About six or seven miles apart.

1 Q I see. And how did he discover the bad
2 management of that prison?

3 A What part of the affidavit are you referring
4 to by that question?

5 Q I am referring to the last sentence: "He
6 punished the head of the prison where the Japanese
7 soldiers were interned for his bad management."

8 A The head of the prison was punished because
9 of poor control over the affairs of the prison follow-
10 ing desertion from that prison of Japanese soldiers.

11 Q That is, desertion of prisoners from the
12 prison?

13 A Yes, Japanese soldiers who had been tried
14 at a court-martial had escaped from the prison.

15 Q And when did this take place?

16 A I do not recall the date.

17 Q Was it in '45 or '44?

18 A It was after General KILURA arrived at his
19 post.
20

21 Q Did he cause any investigation to be made
22 as to the condition of prisoners of war at Rangoon
23 as a result of the finding of the bad conditions at
24 that Japanese prison?

25 A There seems to be some misunderstanding, but
the Japanese soldiers did not desert the prison because

of bad management as you suggest.

Q Witness, what I suggest is this: The accused KIMURA found that bad conditions, bad management, existed at the Japanese prison as a result of which Japanese prisoners were allowed to escape; and, having found that, it would be logical for him to insure that conditions were quite good; there was no danger of escape, say, at Rangoon prisoner of war camp. Did he cause any investigation to be made there?

THE INTERPRETER: Just prior to the question by the prosecutor, the witness said "No, that is not so."

A Because the prisoner of war camp in Rangoon was outside of the province of my duties, I do not know whether or not commanding general KIMURA directed his staff officer to look after that.

COLONEL MORNANE: That concludes my cross-examination.

MR. HOWARD: Mr. President, may the witness be excused on the usual terms?

THE PRESIDENT: He is excused accordingly, on the usual terms.

(Whereupon, the witness was excused.)

1 MR. HOWARD: I next call the witness TAKAGI
2 whose affidavit is defense document 2681.

3 COLONEL MORNANE: May it please the Tri-
4 bunal, there will be no cross-examination of this
5 witness, and the prosecution have no objection to
6 the defense reading the affidavit.

7 MR. HOWARD: I offer in evidence defense
8 document 2681.

9 THE PRESIDENT: It is admitted on the usual
10 terms.

11 CLERK OF THE COURT: Defense document 2681
12 will receive exhibit No. 3362.

13 (Whereupon, the document above
14 referred to was marked defense exhibit
15 No. 3362 and received in evidence.)
16

17 MR. HOWARD: I read in evidence exhibit No.
18 3362 beginning with paragraph one:

19 "1. My name is TAKAGI, Hidezo. I was born
20 on December 4, 1906. My present residence is in Tokyo.
21 I graduated from the Military Academy in 1928 and the
22 Military Staff College in 1941. Since then, after
23 having served on various posts I was appointed a
24 staff officer to the Burma Area Army in January, 1945
25 and remained on the same until the surrender.

"2. I have read the exhibits presented by

1 the prosecution concerning the illegal acts committed
2 in Burma. But, during my tenure of office in the
3 Burma Area Army, the Headquarters of such had no
4 knowledge of such illegal acts and General KIMURA did
5 not order any such illegal acts. General KIMURA stuck
6 to the maintenance of military discipline and the
7 holding of popularity as the fundamental principle
8 of control and endeavoured to the utmost up until
9 the very last to have his principle realized."

10 I next call the witness YAMAGUCHI whose
11 affidavit is defense document 2586.

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1 E I J I (H I D E J I) Y A M A G U C H I, recalled
2 as a witness on behalf of the defense, having
3 been previously sworn, testified through
4 Japanese interpreters as follows:

DIRECT EXAMINATION

5 THE PRESIDENT: You are still on your former
6 oath.

7 BY MR. HOWARD:

8 Q Please state your name and address.

9 A My name is YAMAGUCHI, Hideji; my present
10 address: No. 134 3-chome, Minami Shiro-machi,
11 Takada City, Niigata Prefecture.

12 MR. HOWARD: I ask that the witness be
13 shown defense document 2586.

14 Q Is that your affidavit and did you sign it?

15 A Yes.

16 Q Are the contents therein true and correct?

17 A Yes, both true and correct.

18 MR. HOWARD: I offer in evidence defense
19 document 2586.

20 THE PRESIDENT: Colonel Mornane.

21 COLONEL MORNANE: May it please the Tribunal,
22 the prosecution objects to the whole of the second
23 paragraph of this affidavit on the ground that it is
24 a resume of various exhibits that have already been
25

1 put in evidence. If it is necessary to give such a
2 resume it is submitted that it is properly the function
3 of counsel at the summation at the close of the case.

4 With regard to the third paragraph, it is
5 objected that it is repetitive of evidence already
6 given during the prisoner of war phase.

7 THE PRESIDENT: Mr. Howard.

8 MR. HOWARD: I agree with the prosecution that
9 paragraph 3 is possibly repetitive but since the
10 prosecution has gone so far afield in citing exhibits
11 in which they claim that General KIMURA was responsible
12 in particular, we submit that it is proper to admit
13 paragraph 2 in order to give the Court some under-
14 standing of just what our defense is in this connec-
15 tion; and in subsection (a) he states that these
16 facts occurred before General KIMURA took the post
17 of commander of the Burma Area Army. We submit that
18 that is direct evidence.
19

20 THE PRESIDENT: By a majority the objections
21 are sustained and the document admitted only to the
22 extent not objected to.

23 CLERK OF THE COURT: Defense document 2586
24 will receive exhibit No. 3363.

25 (Whereupon, the document above
referred to was marked defense exhibit

No. 3363 and received in evidence.)

1 MR. HOWARD: I shall read in evidence
2 exhibit No. 3363, omitting the parts which were not
3 admitted:

4 "1. I, YAMAGUCHI, Eiji, am an ex-lieutenant
5 colonel and was born on the 11th of August 1907. My
6 present domicile is No. 134, 3-Chome, Nanjo-cho,
7 Takada City, Niigata Prefecture. In 1929 I graduated
8 from the Military Academy and in 1938 from the Staff
9 College. Having been detailed on various services
10 since then, I was appointed staff officer of the Burma
11 Area Army on the 8th of July in 1944. Though on the
12 18th of July 1945 my position had been transferred
13 formally to another one, I was in the service as the
14 staff officer for operations until the 20th of the
15 same month.
16

17 * * *

18 "4. The Aviation Division in Burma, the
19 Hikari Organ in charge of liaison affairs with the
20 Indian National Army, the South Field Railway Corps,
21 the Marine Transport Corps and the Naval Base Forces,
22 all of whom were in Burma, were not under the command
23 of General KIMURA."

24 Your witness.

25 COLONEL MORNANE: There will be no

cross-examination, if the Tribunal please.

1 MR. HOWARD: Mr. President, may the witness
2 be released on the usual terms?

3 THE PRESIDENT: He is released accordingly.

4 (Whereupon the witness was excused.)

5 THE PRESIDENT: What about KAWAHARA, SHIBA-
6 YAMA, and TANAKA, Tadakatsu?

7 MR. HOWARD: I should like next to read one
8 sentence from exhibit 1541-A.

9 THE PRESIDENT: It is not on your order of
10 proof, but there is no objection apparently.

11 MR. HOWARD: Your Honor, a supplemental
12 order of proof was supposed to have been distributed
13 yesterday with the one item on it.

14 THE PRESIDENT: Yes, read it.

15 MR. HOWARD: It is at page 12, one sentence
16 only near the top of the page: "It was stated in
17 several of the affidavits that the accused TAZUMI was
18 a better prison commandant than any of his predecessors."
19

20 I now call witness KAWAHARA, whose affidavit
21 is defense document 955.

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1 N A O I C H I K A W A H A R A, called as a witness
2 on behalf of the defense, being first duly
3 sworn, testified through Japanese interpreters
4 as follows:

DIRECT EXAMINATION

5 BY MR. HOWARD:

6 Q Please state your name and address.

7 A My name is KAWAHARA, Naoichi; and my
8 address: No. 18 Takamatsu, 2-chome, Toshima Ward,
9 Tokyo.

10 MR. HOWARD: I ask that the witness be shown
11 defense document 955.

12 Q Is that your affidavit and did you sign it?

13 A Yes.

14 Q Are the contents therein true and correct?

15 A Yes.

16 MR. HOWARD: I offer in evidence defense
17 document 955.

18 THE PRESIDENT: Colonel Mornane.

19 COLONEL MORNANE: If the Tribunal pleases,
20 the prosecution objects to a portion of paragraph 7
21 appearing on page 3 and page 4, that is, after the
22 first sentence starting at "According" and going down
23 to "approval" in the second line on page 4.

24 Immediately prior to the part objected to
25

1 the witness says, "The affairs of the War Ministry
2 were managed in accordance with both government
3 organization regulations and special regulations
4 which the War Minister issued."

5 THE PRESIDENT: Presumably in writing.

6 COLONEL MORNANE: That is so, sir.

7 Certain regulations have been put in. They
8 are either the ones referred to or not but if there
9 are others, their nonproduction should be accounted
10 for before the witness is allowed to give evidence
11 of them.

12 MR. HOWARD: Your Honor, this was intended
13 as an interpretation of those rules and regulations.

14 THE PRESIDENT: That is just what we cannot
15 allow him to do, interpret documents, and we cannot
16 take his evidence of the contents of documents not
17 produced or not accounted for.

18 MR. HOWARD: Your Honor, the documents
19 referred to are in evidence.

20 THE PRESIDENT: The objection must be upheld
21 if that is so because you are not going to try to
22 work them into this affidavit. Objection upheld.

23 The document is admitted subject to that
24 part of clause 7 indicated by Colonel Mornane being
25 deleted and on the usual terms.

1 CLERK OF THE COURT: Defense document 955
2 will receive exhibit No. 3364.

3 (Whereupon, the document above
4 referred to was marked defense exhibit
5 No. 3364 and received in evidence.)
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1 MR. HOWARD: I will read in evidence exhibit
2 3364, beginning at paragraph I and leaving out the
3 parts objected to.

4 "I. I held the post of Adjutant-General of the
5 War Ministry from August 1939 to February 1943.

6 "Lieutenant-General KIMURA, Vice-War Minister,
7 worked with me under Minister TOJO during the greater part
8 of his tenure of office.

9 "II. I managed the affairs of the Minister's
10 Secretariat by order of the Minister as a senior of the
11 Adjutant Department. My principal business was to take
12 charge of official seals of the Minister and the
13 Ministry, to inspect, receive and send public corres-
14 pondence (including telegrams) and to inspect finished
15 documents, to receive foreign officers and to conduct
16 general affairs.

17 "III. Vice-Minister KIMURA was a typical
18 soldier. He concentrated his energy chiefly on the
19 administrative business regarding ordnance in which he
20 was well versed and at the same time he endeavored to
21 establish harmony and unity in the Ministry. He helped
22 the Minister passively compared with the acute and
23 positive man, TOJO. Consequently, the Vice-Minister
24 took charge of almost all of the routine and ceremonial
25 affairs and miscellaneous business of the Minister.

1 "IV. Even after he became Premier and War
2 Minister, concurrently, General TOJO managed all affairs
3 of the War Ministry for himself with strenuous efforts,
4 so that the powers of Vice Minister and the matters
5 under his charge were the same as before and were not
6 extended at all; nor was he ordered to act for the
7 Minister.

8 "V. Vice-Minister KIMURA never attended the
9 Liaison Conference or Imperial Conferences nor was he
10 present at the Information Conferences of the Imperial
11 Headquarters, nor the Information Conferences of Chiefs
12 of Departments, nor the commissary Information Con-
13 ferences held at the General Staff Office.

14 "VI. The Information Conferences of Bureau
15 Chiefs were held with the aim of establishing a close
16 contact between Minister, Vice-Minister, Chiefs of
17 Departments and Chiefs of Bureaus; it was not a means
18 by which to decide matters. And the Minister presided
19 over them both in name and reality, giving it scrupu-
20 lous care and apt direction.

21 "The contents of the Vice Minister's Note by
22 Order regarding the 'Disposal of Prisoners of War at
23 Present (ix. 1965A)' was reported directly to the
24 Minister by UEMURA, Chief of the Prisoner of War Control
25 Bureau at the Information Conference of Bureau Chiefs

1 at which time he obtained his approval. I do not re-
2 call that any protest concerning the maltreatment of
3 POW was discussed in the Information Conference of
4 Bureau Chiefs during my tenure of office as Adjutant-
5 General.

6 "VII. The affairs of the War Ministry were
7 managed in accordance with both government organiza-
8 tion regulations and special regulations which the War
9 Minister issued."

10 Skipping the parts objected to:

11 "Of course, all other important matters needed
12 the Minister's decision. Namely, either by the direct
13 order of the Minister or in accordance with his con-
14 firmed intention, a policy or plan important to the Army
15 was formed by the competent Bureau and Department, and
16 was deliberated by Departments and Bureaus concerned and
17 became a definite plan through the Minister's final
18 decision. As was clearly shown in the internal law of
19 the army, it was the most important principle of obedi-
20 ence for soldiers that even if the soldiers were divided
21 in opinion during the procedure, they should efface
22 themselves once the Minister gave his decision and should
23 make strenuous efforts to fulfill their superior's
24 intention. No liberty was given them of resigning their
25 posts arbitrarily because of their different opinions.

1 "VIII. The matters which were determined
2 through the above-mentioned process were announced or
3 notified to the outside by public documents (including
4 telegrams). And there were three principal forms of
5 notification, all of which took different forms just
6 because of their contents, but were substantially the
7 public documents of the War Ministry which were sent on
8 the responsibility of the War Minister: firstly, gen-
9 eral matters such as orders of the Ministry, instruc-
10 tions, public notes, orders and directions were issued
11 in the name of the Minister; secondly, other individual
12 matters, not general, or matters which rank second in
13 importance, in the name of the Vice-Minister; thirdly,
14 less important matters and usual ones such as interpreta-
15 tion of laws, in the name of the Adjutant-General. But
16 all of them were notified on the responsibility of the
17 War Minister and the senders were not responsible for
18 their contents; there was no exception among them.
19 Among them there were the public documents (including
20 telegrams) such as Vice-Minister's note by order, Vice-
21 Minister's note, Vice-Minister's inquiry and answer which
22 were issued in the name of Vice Minister of War, and
23 Adjutant-General's note which were issued in the name
24 of Adjutant General. These were classified, as mentioned
25 above, by the relative importance of their contents and

1 the recipients of such public documents or the parties
2 to which they were addressed. The classification deter-
3 mined the names of senders and they were classified by
4 the competent Bureau and inspected by the Secretariat.
5 Documents issued in the name of the chief of bureau or
6 department were not recognized as official documents
7 of the Ministry of War and they were not allowed to go
8 beyond the purview of preliminary and liaison negotia-
9 tions with offices other than those within the Ministry.

10 "The mere fact that a man's name was placed
11 on a piece of official correspondence or order did not
12 necessarily mean that such person was responsible for the
13 subject matter therein contained. To make this clear,
14 the 'note sent by order' was invariably preceded by an
15 introductory remark, 'as the Minister has decided so I
16 send this note by order'.

17 "Furthermore, all the Vice-Minister's notes
18 (not by order) such as answers to inquiries not only
19 included the matters under the charge of the Vice-
20 Minister but they often included matters decided by War
21 Minister or under the charge of Chiefs Bureaus. Moreover,
22 at that time the War Ministry usually dispatched an av-
23 erage of approximately 4,000 official documents a day,
24 and although most of these documents dealt with matters
25 under the charge of Chiefs of Bureaus, they were sometimes

1 sent under the name of the Senior Adjutant.

2 "As to all the communications, including tele-
3 grams and notes between the War Ministry and various
4 Area Armies and divisions, it was customary to use for
5 their sender or addressee either the Chief of Staff or
6 Vice-Minister as the case may be, and the name of the
7 Minister and Divisional Commander were not mentioned
8 in most cases. As examples of 'Notification of Vice-
9 Minister by Order', there are the following: 'Disposal
10 of Prisoners of War' (exhibit 1965A) and 'Matters con-
11 cerning the Treatment of Crews of Enemy Aircraft which
12 were Captured in Air Raiding the Imperial Territory,
13 Manchukuo, or Our Operational Areas.' (Exhibit 1992).
14 As an example of an answer of Vice Minister, there is
15 'Reply from Vice Minister of War to Vice Minister of
16 Foreign Affairs' (exhibit 1958). And as examples of
17 documents which were issued or received in the name of
18 Vice Minister of War and chief of staff of Army, there
19 are the following: 'Inquiry Concerning the Question
20 of Making Available the Manchurian Machine Tool Co.
21 for a Rapid Increase in Aircraft Production,' (exhibit
22 1970-A). 'Matters concerning Internment of Prisoners
23 of War in Korea' (exhibit 1973) and 'Matters of the
24 Presenting of Report Concerning the Reaction Among the
25 General Public following Internment of British Prisoners

1 of War' (exhibit 1975-A).

2 "TX. All the official correspondence (includ-
3 ing telegrams) which the War Ministry was to send to the
4 outside, as well as these (including telegrams) which
5 were addressed to the Ministry from the outside were
6 first brought to the Adjutant Department without excep-
7 tion. The Adjutant Department forwarded the outgoing
8 official correspondence after inspection, and delivered
9 the incoming correspondence to the competent Section at
10 once. Upon receiving important matters that required
11 directions from the War Ministry the competent section
12 drafted the necessary instructions or orders in conformit
13 with the Minister's idea. But regarding the disposal of
14 unimportant ones, they were offered for superior's
15 inspection after the preparation of it and some of the
16 less important matters entrusted to the Section were
17 not inspected by superiors. And all of those documents
18 were sent in the names of Minister, Vice-Minister or the
19 Adjutant-General.

20 "X. The matters in the War Ministry concerning
21 the treatment of prisoners of war lay chiefly in the
22 hands of the Chief of the Prisoner of War Control Depart-
23 ment, but other Chiefs of Bureaus disposed of the POW
24 matters which fell under their jurisdiction, holding
25 themselves directly responsible to the Minister.

1 "The Chief of the Prisoner of War Control
2 Department was entrusted with a considerable amount of
3 matters concerning unimportant business of treatment
4 of prisoners, but the Vice-Minister was not entrusted
5 with any matters regarding the business under the juris-
6 diction of the Chief of the Prisoner of War Control
7 Department.

8 "XI. The matters about the investigation of
9 conditions of prisoners and the correspondence on them
10 were chiefly in charge of the Prisoners of War Informa-
11 tion Bureau. The Bureau was an organ under the direct
12 control of the War Minister and an outside bureau of
13 the War Ministry which had independent character. There-
14 fore, documents were exchanged between the Bureau and
15 the outside directly, not through the Adjutant Depart-
16 ment of the War Ministry. The Vice-Minister was not
17 entrusted with any matters regarding the business which
18 fell under the jurisdiction of the Bureau.

19 "XII. Foreign officers have visited the Vice
20 War Minister to pay formal courtesies, but have never
21 come on political and practical business."

22
23 Now, with the Court's permission, I would like
24 to ask one additional question.
25

BY MR. HOWARD (Continued):

1 Q When documents were drafted by other minis-
2 tries, or by the General Staff, and these documents
3 were made rental by the War Ministry, who was consid-
4 ered responsible for the decisions expressed in the
5 documents?
6

7 THE PRESIDENT: Colonel Mornane.

8 COLONEL MORNANE: May it please the Tribunal,
9 the prosecution objects to this question on the ground
10 that it is too vague. When you refer to responsibility
11 it may be responsibility as far as other government
12 departments are concerned in relation to the War Minis-
13 try, or it may be the War Minister's attitude toward
14 the responsibility of a subordinate official. In other
15 words, as regards a document approved by the Vice Minis-
16 ter of War, although the Minister of War may have to
17 take the responsibility as far as the other Japanese
18 government departments is concerned, it still may be
19 the Vice Minister's responsibility from the point of
20 view of TOJO, the Minister for War.

21 Of course, the matter may be cleared up in
22 cross-examination, but it is submitted that the ques-
23 tion be put more precisely.
24

25 THE PRESIDENT: Could you be a little clearer,
Mr. Howard?

1 MR. HOWARD: Mr. President, I think the
2 witness understands my question thoroughly.

3 THE PRESIDENT: Yes.

4 MR. HOWARD: And his answer will clear the
5 question possibly.

6 THE PRESIDENT: Well, Colonel Mornane seems
7 to be prepared to leave it to cross-examination, so
8 let the witness answer.

9 A In the event decisions are made on the basis
10 of rental only the War Minister himself carries the
11 responsibility.

12 MR. HOWARD: You may have the witness.

13 THE PRESIDENT: Colonel Mornane.

14 CROSS-EXAMINATION

15 BY COLONEL MORNANE:

16 Q Witness, do you know any officials who were
17 in the War Ministry in your time by the name -- or do
18 you know an official by the name of KITA, K-i-t-a?

19 A KITA, is that who you are referring to, KITA?
20 What is his name, his first name?

21 Q I am afraid I can't supply that to you, but
22 was there anyone with the second or surname of KITA?

23 A I have no recollection.

24 Q Well, anyone by the name of HAMADA, H-a-m-a-d-a?

25 A Not in the War Ministry.

1 Q Where was he?

2 A There was a HAMADA who was in the Inspector-
3 ate General of Military Education for a short while;
4 however, his name was HAMADA, Suyeo, S-u-y-e-o.

5 Q Well, now, Witness, who was the Diet Vice
6 Minister while KIMURA was the Vice Minister for War?

7 A I can't recall.

8 Q Was there a Diet Vice Minister at that time?

9 A I do not think there was a Parliamentary Vice
10 Minister while General KIMURA was Vice Minister. I
11 have no definite recollection as to when that post
12 was empty.

13 Q Well, now, was there any Counsellor while
14 KIMURA was Vice Minister for War?

15 A My recollection is the same with respect to
16 the Parliamentary Vice Minister or Parliamentary Coun-
17 sellor.

18 Q And the duties normally performed by the Par-
19 liamentary Vice Minister and the Parliamentary Coun-
20 sellor were in fact performed by the accused KIMURA,
21 were they not?
22

23 A This is based upon my recollection of the work
24 of the Parliamentary Vice Minister and the Parliamentary
25 Counsellor during the tenure of office of Vice Minister
ANAMI who preceded Vice Minister KIMURA, and on the

1 basis of that recollection I should like to say that
2 both these men, namely the Parliamentary Vice Minister
3 and Counsellor had hardly anything to do, and their
4 work began only, and was conducted only when the Diet
5 opened and was continued to be in session.

6 Q It was part of the duty of each of these men
7 to take part in matters concerning negotiations with
8 the Imperial Diet, was it not?

9 A Yes.

10 Q And the Vice Minister's duty was restricted
11 to assisting the Minister, coordinating the affairs
12 of the Ministry, and supervising the offices of bureaus
13 and divisions?

14 A The Vice Minister had the authority to coor-
15 dinate the work of bureaus and divisions, but not the
16 authority to supervise their work.

17 Q We will leave that part for the moment. But
18 the regulations gave him no authority to take part
19 in political affairs or to enter into negotiations
20 with the Imperial Diet?

21 A No.

22 Q And, of course, you know KIMURA did actually
23 take part in these negotiations on several occasions
24 at least?

25 A Only when he was appointed as a member of the

1 Government Committee in the Diet.

2 Q That would be on the appointment of the
3 War Minister?

4 A No, appointment by the government.

5 Q And the normal appointment to that position
6 would be the Parliamentary Vice Minister?

7 THE MONITOR: The witness asked: "What do
8 you mean by that work?"

9 Q The War Ministry representative on the Govern-
10 ment Committee would normally -- would usually be the
11 Parliamentary Vice Minister or Parliamentary Counsellor
12 from the War Ministry, would he not?

13 A No. Members of the Government Committee are
14 not limited to them alone.

15 THE PRESIDENT: You will be some time with
16 this witness?

17 COLONEL MOHNANE: Evidently, sir.

18 THE PRESIDENT: We will adjourn until half-
19 past nine Monday morning.

20 (Whereupon, at 1600, an adjourn-
21 ment was taken until Monday, 27 October 1947,
22 at 0930.)
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25